BLA Meets With CLARB. On June 22, BLA officials met with CLARB representatives in an attempt to improve communication and restore a working relationship between the two entities; problems between BLA and CLARB resulted in BLA's decision to discontinue using CLARB's licensing exam. *[12:4 CRLR 86]* Among other things, the meeting resulted in the clarification of the following:

–California intends to continue the administration of the PELA twice per year but is supportive of working with CLARB on other issues of equal importance.

–CLARB is promoting its Landscape Architect-in-Training (LAIT) program which should assist candidates in having better success on its licensing exam.

–CLARB's exam vendor will be proposing a study to determine how CLARB's exam could be administered in a two-step process.

–Both CLARB and BLA agree that greater monitoring of candidates is beneficial to candidates, review course providers, schools, and the exam vendor.

–CLARB's proposed exam fee increases are prohibitive for California's participation.

–California will evaluate the subject matter of CLARB's exam and compare it to the PELA to assist in reciprocity for out-of-state applicants.

–California will share the results of the PELA with other states and request their evaluation for reciprocity to California's landscape architects.

Proposed Legislation for 1994. At its July 23 meeting, BLA approved plans to introduce various pieces of legislation during 1994. For example, one proposal would require landscape architects to use 20% recyclable materials for their design plans; CCASLA opposes this proposed requirement on the basis that landscape architects would have to use more expensive materials and thus charge more for their services. A second proposal would amend Business and Professions Code section 5650, which currently requires candidates to have six years of training and educational experience in actual landscape architecture in order to sit for the exam; BLA's amendments would require six years of education and/or experience (*see above*). Another proposal would amend Business and Professions Code section 5680.05 to require licensees to report to the Board any judgment by a California court that the licensee has committed a crime or is liable for any death, personal or property injury, or loss caused by his/her fraud, deceit, negligence, incompetency, or recklessness in practice. A final proposal would amend Business and Professions Code section 5681 to increase the fee for filing an application for approval of an extension school from $600 to not more than $5,000; part of the increase will cover the Board's site visits to extension schools.

LEGISLATION

SB 842 (Presley), as amended July 14, permits BLA to issue interim orders of suspension and other license restrictions, as specified, against its licensees. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

AB 1392 (Speier), as amended July 1, would—among other things—provide that BLA's executive officer is to be appointed by the Governor, subject to Senate confirmation, and that the Board's executive officer and employees are under the control of the Director of the Department of Consumer Affairs. *[S. B&P]*

AB 1807 (Bronshvag), as amended September 8, would reduce the time within which a landscape architect may renew his/her expired license from five to three years. *[A. Inactive File]*

AB 1848 (Cortese). Under existing law, a design professional is entitled to a specified design professional's lien on real property for which a work of improvement is planned and for which governmental approval is obtained, as specified; existing law defines the term "design professional" to include architects, engineers, and land surveyors. As introduced March 5, this bill would have expanded that definition to include licensed landscape architects. AB 1848 died in committee.

RECENT MEETINGS

At its July 23 meeting in Sacramento, BLA presented former Board member George Gribkoff with a plaque commemorating Gribkoff's tenure on the Board as President and Chair of the Enforcement Committee.

Also at the July meeting, the Board directed Executive Officer Jeanne Brode to review BLA's existing regulations which specify the time period within which candidates may appeal their exam scores; the Board may pursue regulatory revisions to revise those time periods.

FUTURE MEETINGS

To be announced.

MEDICAL BOARD OF CALIFORNIA

Executive Director: Dixon Arnett
(916) 263-2389
Toll-Free Complaint Number:
1-800-MED-BD-CA

The Medical Board of California (MBC) is an administrative agency within the state Department of Consumer Affairs (DCA). The Board, which consists of twelve physicians and seven non-physicians appointed to four-year terms, is divided into three autonomous divisions: Licensing, Medical Quality, and Allied Health Professions.

The purpose of MBC and its three divisions is to protect the consumer from incompetent, grossly negligent, unlicensed, or unethical practitioners; to enforce provisions of the Medical Practice Act (California Business and Professions Code section 2000 *et seq.*); and to educate healing arts licensees and the public on health quality issues. The Board's regulations are codified in Division 13, Title 16 of the California Code of Regulations (CCR).

The functions of the individual divisions are as follows:

MBC's Division of Licensing (DOL) is responsible for issuing regular and probationary licenses and certificates under the Board's jurisdiction; administering the Board's continuing medical education program; and administering physician and surgeon examinations for some license applicants.

In response to complaints from the public and reports from health care facilities, the Division of Medical Quality (DMQ) reviews the quality of medical practice carried out by physicians and surgeons. This responsibility includes enforcement of the disciplinary and criminal provisions of the Medical Practice Act. It also includes the suspension, revocation, or limitation of licenses after the conclusion of disciplinary actions. The division operates in conjunction with fourteen Medical Quality Review Committees (MQRC) established on a geographic basis throughout the state. Committee members are physicians, other health professionals, and lay persons assigned by DMQ to review matters, hear disciplinary charges against physicians, and receive input from consumers and health care providers in the community.

The Division of Allied Health Professions (DAHP) directly regulates five nonphysician health occupations and oversees the activities of eight other examining committees and boards which license podiatrists and non-physician certificate holders under the jurisdiction of the Board. The following allied health professions are subject to the oversight of DAHP: acupuncturists, audiologists, hearing aid dispensers, medical assistants, physical therapists, physical therapist assistants, physician assistants, podiatrists, psychologists, psychological assistants, registered dispensing opticians, research psychoanalysts, speech pathologists, and respiratory care practitioners.

DAHP members are assigned as liaisons to one or two of these boards or committees, and may also be assigned as liaisons to a board regulating a related area such as pharmacy, optometry, or nursing. As liaisons, DAHP members are expected to attend two or three meetings of their assigned board or committee each year, and to keep the Division informed of activities or issues which may affect the professions under the Medical Board's jurisdiction.

MBC's three divisions meet together approximately four times per year. Individual divisions and subcommittees also hold additional separate meetings as the need arises.

MAJOR PROJECTS

Governor Signs Board-Supported Bill to Reform Physician Discipline System and Restructure MBC. On October 11, Governor Wilson signed SB 916 (Presley) (Chapter 1267, Statutes of 1993), a wide-ranging bill which reforms parts of MBC's physician discipline system and restructures the Board to better accommodate its growing need to focus more attention and resources on enforcement. *[13:2&3 CRLR 81]*

Over the summer, MBC staff and Board members participated in negotiating the terms of the bill, which was sponsored by the Center for Public Interest Law (CPIL). Other participating interests included the California Medical Association (CMA), the Department of Consumer Affairs (DCA), the Attorney General's Office (AG), the Board of Podiatric Medicine (BPM), the Judicial Council, representatives from the offices of Senators Robert Presley and Dan Boatwright, and grassroots organizations such as Safe Medicine for Consumers.

Through negotiation, compromise, and decisionmaking at legislative hearings, the bill grew and evolved into one which contained at least one provision which each major party desperately wanted. To obtain these provisions, each party had to give up other provisions it wanted, or grudgingly accept provisions it opposed. The key provisions which held the negotiations together include the following:

–CPIL, seeking enactment of several provisions it was forced to amend out of SB 2375 (Presley) (Chapter 1597, Statutes of 1990) *[10:4 CRLR 79, 84]*, its previous physician discipline bill, sought to create a specialized panel of administrative law judges (ALJs) to exclusively preside over physician discipline cases, streamline the judicial review process which follows a DMQ discipline decision, and require MBC to disclose more information about physicians to inquiring consumers;

–MBC wanted to enhance the authority of its investigators and strengthen the penalties for a physician's failure to cooperate with its investigations, adopt a system of mid-level sanctions, and restructure the Division of Allied Health Professions and DMQ's Medical Quality Review Committees;

–CMA wanted an audit of the fiscal efficiency of all aspects of the Board's discipline system (including the Attorney General's Office), and hoped to keep the expected MBC license fee increase to a minimum; and

–the AG's Office wanted an MBC fee increase to enable it to more fully staff its Health Quality Enforcement Section (HQES), a unit of prosecutors who specialize in handling physician discipline cases.

At their July meetings, DMQ and then the full Board entertained lengthy presentations on several key provisions of SB 916; following long debate, the full Board voted 9–8 to support the entire bill if CPIL amended its ALJ panel provision to satisfy some concerns of the Wilson administration. Because CPIL amended the provision as promised, MBC took a support position on SB 916 when it was heard by the Assembly Health Committee on August 24.

As passed by the legislature, SB 916 satisfied most of the wishes of the negotiators and the bill's author, Senator Robert Presley. As amended September 8 and signed on October 11, SB 916 makes the following changes to MBC and its physician discipline system.

• ***Disciplinary Process.*** With regard to the Board's system of receiving, investigating, and prosecuting disciplinary complaints against physicians, SB 916:

–Amends Business and Professions Code section 2225 to authorize DMQ, BPM, and the AG to inquire into any alleged violation of the Medical Practice Act or other relevant state or federal statute or regulation, and inspect documents as follows: (1) any document relevant to an investigation may be inspected and copied where patient consent is given; (2) any document relevant to a licensee's business operations (not medical records) may be inspected and copied where relevant to an investigation; (3) where documents are requested by DMQ, BPM, or the AG, they must be provided within fifteen days of receipt of the request, unless the licensee is unable to provide them within this time period for good cause; and (4) searches, inspections, and copying shall not unnecessarily disrupt the medical or business operations of the licensee's facility.

–Adds section 2225.5 to the Business and Professions Code, to provide that a licensee who fails or refuses to comply with a request for medical records of a patient within fifteen days of receipt of the request, where the request is accompanied by patient authorization, must pay $1,000 per day for each day after the fifteenth day, "unless the licensee is unable to provide the documents within this time period for good cause." Also, a licensee who refuses to comply with a court order mandating the release of records must pay DMQ $1,000 per day for each day that the documents are not produced after the court-ordered date. Imposition of these penalties is subject to Administrative Procedure Act hearing procedures.

–Amends Business and Professions Code section 805 to require hospitals and other health facilities to expedite the filing of so-called "section 805 reports" to DMQ within fifteen days of the facility's revocation, suspension, restriction, or denial of a physician's admitting privileges.

–Adds section 364.1 to the Civil Code to require medical malpractice plaintiffs to transmit the 90-day intent-to-sue letter required by the Medical Injury Compensation Reform Act (MICRA) to DMQ or BPM at the same time as it is sent to the defendant.

–Adds section 2233 to the Business and Professions Code to permit DMQ to issue, "by stipulation or settlement with the affected physician and surgeon," a public letter of reprimand after it has conducted an investigation. DMQ must first issue a notice of intent to issue a public letter of reprimand, and give the licensee thirty days in which to agree to it or "non-agree" to it. If the physician agrees to it, the letter may be issued and disclosed to inquiring members of the public. If the physician does not agree to it and instead requests a hearing, DMQ will request an accusation from HQES and send the matter to hearing. SB 916 specifies that use of a public reprimand must be limited to minor violations and issued under guidelines established by regulations of the Board.

–Adds new section 11371 to the Government Code to establish within the Office of Administrative Hearings (OAH) a Medical Quality Hearing Panel (MQHP), which must consist of at least five ALJs and no more than 25% of the ALJs in OAH. These MQHP judges must have medical training as recommended by DMQ and approved by the OAH Director. The OAH Director is responsible for appointing ALJs to the panel, supervising their training, and coordinating the publication of their decisions in a quarterly

Medical Discipline Report. The MQHP judges shall have panels of experts available which they may call at hearings, on the record and subject to cross-examination by all parties; these panels of experts shall be appointed by the OAH Director. By April 1, 1997, MBC must prepare a report analyzing the effectiveness of the MQHP. At the insistence of OAH and DCA, the MQHP provision sunsets on January 1, 1997, unless reenacted before that date.

–Amends Government Code section 11529, regarding interim suspension order (ISO) proceedings presided over by MQHP ALJs, to specify that (1) if an ISO is issued *ex parte*, the physician is entitled to a hearing within twenty days of the issuance of the ISO or it shall be dissolved; (2) the ISO hearing shall be affidavit-only, instead of a full-blown evidentiary hearing complete with live-witness testimony ("the discretion of the ALJ to permit testimony at the hearing conducted pursuant to this section shall be identical to the discretion of a superior court judge to permit testimony at a [temporary restraining order (TRO)] hearing conducted pursuant to section 527 of the Code of Civil Procedure"); (3) the burden of proof in an ISO proceeding before a MQHP ALJ is identical to that before a superior court judge in a TRO proceeding—this provision expressly overrules the Third District Court of Appeal's decision in *Silva v. Superior Court (Heerhartz) [13:2&3 CRLR 85]*; (4) where an ISO is issued, the accusation must be filed within fifteen days of the parties' submission of the ISO matter, or the ISO is dissolved; (5) if a licensee requests a hearing on the accusation, a hearing must be provided within thirty days of the request.

–Adds section 2330 to the Business and Professions Code to provide that complainants against licensees of MBC, BPM, or the allied health boards currently under the jurisdiction of MBC who are subject to formal disciplinary proceedings shall be notified of the action proposed to be taken against the licensee, and given an opportunity to make a statement to the HQES attorney assigned to the case. These statements may not be considered by DMQ, BPM or other board for purposes of that particular case, but may be considered by them for purposes of setting generally applicable policies and standards.

• ***Judicial Review of DMQ/BPM Disciplinary Decisions***. SB 916 also streamlines the process of judicial review of a DMQ or BPM disciplinary decision. Currently, an aggrieved licensee is entitled to challenge an agency disciplinary decision in both superior court and the court of appeal; thereafter, he/she may petition the California Supreme Court for a discretionary review of the case. The process frequently adds three to five years to the disciplinary process, and the licensee is often successful in persuading the court to stay the agency's decision pending conclusion of the appeal. SB 916 amends Business and Professions Code section 2337 to provide that review of a final decision by DMQ, BPM, or an MQHP ALJ shall be by way of a Code of Civil Procedure section 1094.5 petition for writ of mandate to a court of appeal, which shall exercise its independent judgment in review of the proceedings below. If the court finds that there is relevant evidence which was improperly excluded below or could not have been produced below in the exercise of reasonable diligence, it may admit the evidence without remanding the case. This provision becomes operative on January 1, 1995 and is effective until January 1, 1999.

• ***Disclosure of Information to the Public***. SB 916 also requires MBC to implement the public disclosure decisions it made at its May 1993 meeting. *[13:2&3 CRLR 78–81]* Specifically, it:

–Amends Business and Professions Code section 803 to require MBC and BPM to adopt regulations governing the disclosure of medical malpractice judgments in excess of $30,000 and felony convictions of licensees; if these regulations are not adopted by July 1, 1995, then SB 916 requires MBC and BPM to disclose that information to inquiring consumers.

–Adds section 803.1 to the Business and Professions Code to effectively require MBC and BPM to disclose (or adopt regulations governing the disclosure of) certain information to inquiring consumers, including TROs and ISOs against a licensee, Board-ordered limitations on practice, public letters of reprimand, and infractions, citations, and fines imposed against licensees.

–Adds section 43.96 to the Civil Code to require medical societies, health facilities, government agencies, and others who receive complaints or information about MBC/BPM licensees to "inform the complainant that the Medical Board of California or the Board of Podiatric Medicine, as the case may be, is the only authority in the state that may take disciplinary action against the license of the named licensee, and...provide to the complainant the address and toll-free telephone number of the applicable state board."

• ***Board Structure***. SB 916 also makes several long-debated changes to the structure of the Medical Board and the mechanism by which it makes use of non-Board-member "volunteer" physicians and non-physicians in its enforcement process. The bill:

–Amends Business and Professions Code sections 2008 and 2230 to abolish the Division of Allied Heath Professions on July 1, 1994. On that date, those MBC members previously assigned to DAHP will become members of DMQ. Thus, DMQ will consist of twelve members (including four public members), and DOL will consist of seven members (including three public members). Further, DMQ may organize itself into two panels of six members each (including two public members); a panel may make a final disciplinary decision, and the DMQ president must rotate the membership of the panels at least annually.

–Adds new section 2015 to the Business and Professions Code on July 1, 1994, to require MBC to create a Committee on Allied Health Professions, which "may advise the board and divisions on issues pertaining to the regulation of any allied health profession under the jurisdiction of the board or its divisions, or located within the board."

–Repeals the provisions of the Business and Professions Code establishing MBC's Medical Quality Review Committees and, as an alternative to the MQRCs, adds section 2332 to authorize DMQ and HQES to establish panels or lists of experts to assist them in administering MBC's enforcement program. DMQ may also adopt regulations to create a system for the use of volunteer physicians in specified aspects of its disciplinary system.

• ***Resources and Accountability***. SB 916 attempted to increase the resources available to DMQ for its enforcement program by amending Business and Professions Code section 2435 to increase MBC's initial license fee from $500 to $600, and its biennial renewal fee from $500 to $600. However, at the insistence of CMA, SB 916 specified that this fee increase would not go into effect if any funds were transferred from the MBC contingent fund to the general fund in 1993–94 budget bill. *[12:4 CRLR 1]* Further, if CMA wins its lawsuit challenging the legislature's 1992 transfer of funds from the MBC contingent fund to the general fund (*see* LITIGATION), "all moneys returned to the Contingent Fund of the Medical Board of California shall be used to offset any license fee increase authorized by...this bill." And finally, the fee increase language was double-joined to language in AB 1807 (Bronshvag), a DCA omnibus bill, meaning that unless both bills were passed and signed, the fee increase language in SB 916 would

not take effect. In an unusual move in the last days of the legislative year, the legislature stalled AB 1807 and it became a two-year bill; this action was reportedly prompted by DCA's "packing" of the omnibus bill with controversial provisions to which CMA (among others) objected. Thus, SB 916 will not increase physician licensing fees. However, MBC plans to introduce urgency legislation early in 1994 to increase fees retroactive to January 1.

SB 916 was more successful in ensuring better oversight and accountability of the Medical Board's discipline system. Specifically, it:

–Adds section 116 to the Business and Professions Code to authorize the DCA Director to audit and review inquiries and complaints regarding MBC licensees at request of a consumer or licensee. If the DCA Director so audits, he/she shall report to Senate Business and Professions and Assembly Health committees annually regarding his/her findings.

–Adds section 2026 to the Business and Professions Code to require the State Auditor to perform an audit of MBC's disciplinary system on or before March 1, 1995, including an accounting of moneys spent on OAH ALJs and the AG's Office. "This review shall include an evaluation of the Attorney General's office in its performance of these services."

During the interested parties' conferences on SB 916 and its trip through the legislature, several controversial provisions were compromised through negotiation or killed by the legislature due to lobbying. Specifically:

–The May 18 version of SB 916 included an amendment to Business and Professions Code section 805 to require the Medical Board to disclose certain "section 805 reports" of hospital privileges revocation, suspension, restriction, or denial to inquiring members of the public. MBC had approved this provision by a 9–4 vote at its May meeting. *[13:2&3 CRLR 78–81]* On June 14, the Senate Business and Professions Committee unanimously struck this provision due to heavy CMA lobbying in opposition to the proposal (*see* COMMENTARY).

–The Business and Professions Committee also killed a provision requiring the AG's Office to place two deputy attorneys general (DAG) in charge of DMQ's Central Complaint and Investigation Control Unit (CCICU) to ensure proper screening of incoming complaints, attorney guidance on the initial gathering of evidence, and early detection of complaints warranting expedited investigation, interim suspension order work-up, and/or immediate referral to law enforcement for simultaneous criminal investigation. The AG's Office was unwilling to commit two prosecutors to this function, arguing that its current practice of sending one DAG to CCICU once a week to provide attorney access is sufficient. That DAG reviews cases closed by CCICU; she does not review incoming complaints nor cases closed by MBC regional offices.

–As introduced, SB 916 would have removed DMQ's ability to review individual ALJ decisions. Instead of being required to focus almost exclusively on this staggering workload, DMQ would have been transformed into a policymaking panel which would track problems and abuses in the profession and establish industry-wide standards applicable to all licensees. Confronted with opposition to this proposal, CPIL amended it to retain DMQ review of ALJ decisions but impose a 30-day review timeline and a specified standard of review on the Division; currently, the Division has 100 days in which to review an ALJ decision and may reverse or modify it for any reason. The Business and Professions Committee struck the standard of review provision on June 14, and MBC and DCA later succeeded in stretching the review timeline back up to 90 days, over CPIL's strenuous opposition.

–Original provisions establishing an independent Medical Board Discipline Monitor to investigate the entire system and monitor the Board's compliance with both SB 916 and SB 2375 and establishing a Complainants' Grievance Panel to review cases closed at an early stage were combined into an enacted provision authorizing the DCA Director to carry out both of these functions.

MBC Issues Final Report on Response to CHP Report. At its July 30 meeting, the Medical Board approved a draft of a report entitled *The Medical Board: A New Beginning*, which was released to the Governor on August 1. Co-authored by State and Consumer Services Agency Secretary Sandra Smoley, DCA Director Jim Conran, MBC President Dr. Jacquelin Trestrail, and MBC Executive Director Dixon Arnett, the report documents the actions MBC has taken in response to the January 1993 investigative audit of DMQ's enforcement program by the California Highway Patrol (CHP). *[13:2&3 CRLR 78–79]* Calling the CHP audit a "wake-up call," the report chronicles the events which led DCA Director Jim Conran to request the audit, MBC's immediate reactions to it, the dialogue on resolutions to the Board's problems which took place at the March 1993 "Medical Summit," and the Board's implementation of many of the decisions and suggestions made at the Summit during its May and July 1993 meetings. Finally, the report notes that many Summit recommendations are embodied in SB 916 (Presley), which was the subject of numerous negotiation sessions for many months before being signed by Governor on October 11 (*see above*).

A New Beginning documents a period of extraordinary change and activity at the Medical Board, and salutes "the hard work and dedication of the employees of the Medical Board and the Department of Consumers Affairs," including the MBC employees whose complaints to the DCA Director prompted the CHP investigation and the Board's "renewal process." While the report notes disagreement over the need for and contents of the CHP report, it also states that "few could deny that the Report provided the impetus for what some have said is the most important set of decisions made by the Medical Board in its long history. Certainly the Report set in motion instructions from the Governor and others—to find the ways and means to fix the things that are wrong and, thereby, restore public confidence in an institution on which consumers rely."

Implementation of New Public Disclosure Policy Stalled. During the summer, MBC's Task Force on Complaint Processing and Information Disclosure, co-chaired by DOL member Dr. Alan Shumacher and DMQ member Gayle Nathanson, continued work on the implementation of MBC's new public disclosure policy, which was approved by the full Board in May 1993. Specifically, MBC agreed to begin disclosing several items of information about physicians which it had not previously disclosed, including medical malpractice judgments in excess of $30,000, felony convictions, professional discipline in other states, and MBC investigations once they are referred to the AG's Office for the preparation of formal charges. *[See* COMMENTARY; *see also 13:2&3 CRLR 79–81]*

The Task Force held a special June 10 public hearing on the implementation of the policy, met in Sacramento on June 30 to further work out the specifics of the implementation and the disclaimers which will accompany disclosure of the information, and reported the results of these meetings at the full Board's July 30 meeting. Specifically:

–Staff is establishing a new unit to handle public disclosure calls, and developing a new computer screen which will guide telephone staff in responding to requests for information.

–MBC does not intend to establish a toll-free 800 line for these calls; thus, con-

sumers will have to pay to obtain information on a physician.

–If consumers seek documents related to the information disclosure (*e.g.*, the report of a medical malpractice judgment which has been filed with MBC), they must pay at least $2 per page.

–Staff will disclose information on malpractice judgments, felony convictions, and other-state disciplinary actions dating back to January 1, 1993; according to staff, to backload any further "would impose a severe load and a delay of implementation" of the new policy. The only exception to this rule lies in the area of MBC cases referred to the AG's Office; all of these cases will be disclosed to an inquiring consumer regardless of the date of referral.

–Once all the information is backloaded, information on felony convictions and malpractice judgments will be disclosed for five years from the date of the action; MBC disciplinary actions will be disclosed for a ten-year period from the date of the action.

–Information will be provided over the telephone upon request by a consumer related to a particular physician, and MBC will disclose information on three physicians per telephone call. MBC will not produce lists of the names of all physicians who are the subject of certain actions; instead, it will respond only to requests about particular named physicians. If a requester provides a long list of physicians' names, MBC will compile all disclosable information on all of the named physicians and will charge the requester for the costs associated with that search.

–The scheduled implementation date of August 1 was pushed back to October 1 due to MBC's desire to alter its computer screen and fully train all phone answerers.

The Task Force also adopted disclaimer statements which will accompany the disclosure of certain information. For example, if MBC discloses a malpractice judgment, the consumer will be told the date of the judgment, the court in which it was rendered, and the amount; the consumer will also be told that "[a] malpractice judgment is an award for damages and does not necessarily reflect that the physician's medical competence is substandard. All such reported judgments are reviewed by the Medical Board and action taken only if it is determined that a violation of the Medical Practice Act has occurred. Judgments are subject to appeal." Similar disclaimer statements were approved for the disclosure of felony convictions and cases forwarded to the AG's Office.

At the June 10 Task Force hearing and the July 30 MBC meeting, CMA representatives urged MBC to reverse itself on the new policy, arguing that "the devil is in the details" of implementing the policy. Although Task Force co-chair Dr. Shumacher reminded CMA representatives that MBC has made its decision and the issue is not whether to disclose more information but how, CMA is expected to continue its attempt to delay implementation of the new policy up to the October 1 start-up date.

Medical Summit Follow-Up. During the summer and early fall, MBC took follow-up action on other decisions made at the March Medical Summit and its May meeting.

• ***Use of Medical Consultants and Experts***. At its July meeting, DMQ heard a presentation by Enforcement Chief John Lancara and Supervising Deputy Attorney General Barry Ladendorf on the Enforcement Program's use of expert reviewers, medical consultants, and expert witnesses in its discipline cases. This issue has long been a sore spot for the Enforcement Program and HQES attorneys who prosecute DMQ's discipline cases, and MBC decided to look at it in detail at the Summit. *[13:2&3 CRLR 81–82]*

"Medical consultants" (MCs) are full-time MBC employees who work from the Board's regional offices; they are physicians who review and assist in analyzing medical records gathered by DMQ investigators in cases where quality of care is at issue. According to their State Personnel Board (SPB) job description, they are also responsible for providing medical expertise in the review of medical investigations and evaluations of the professional conduct of licensees in relation to the requirements of the law, arranging for the expert review of medical records in cases where subject matter expertise is needed, interviewing physicians who are under investigation or on probation, and occasionally appearing as an expert witness at disciplinary hearings. "Expert reviewers" are independent contractor physicians who review cases at the CCICU level and recommend whether they should be referred for formal investigation, and review cases during and/or after investigation and provide input on whether they warrant formal disciplinary proceedings. These physicians are usually in medical practice and tend to have subject matter expertise in a particular area. The expert reviewers then frequently appear as "expert witnesses" at MBC disciplinary hearings, to testify that the respondent physician's conduct violated the Medical Practice Act and/or the Board's regulations and constitutes an extreme departure from applicable professional standards. MBC is required to present expert medical testimony in cases where quality of care is at issue, and to prove a disciplinable violation by "clear and convincing evidence." This aspect of MBC's enforcement program functions under the supervision of the Board's Enforcement Chief and the supervising investigators of MBC's regional offices.

At the July 29 DMQ meeting, Enforcement Chief Lancara stated that MBC's regional office supervisors report continuing problems with the performance of the Board's medical consultants. "The concerns ranged from problems procuring the best expert reviewers possible to organizational reporting relationships....[T]he Board's Medical Consultants are not participating fully or ensuring expert reviewers produce reports which are clear and accurate. There have been instances where the MCs/reviewers failed to address evidentiary information covered in the investigation report. Additionally, as previously identified by Deputy Attorneys General, there are instances where MCs have not resolved conflicting report statements between two or more expert medical reviewers."

In addition to complaints by MBC regional office supervisors, the deputy attorneys general (DAGs) who prosecute medical discipline cases have also expressed concerns about the performance of the medical consultants. Lancara's report noted that DAGs have opined that "the MC function of selecting expert medical reviewers leaves something to be desired either because the experts are not qualified or they have provided mediocre or poor case evaluation reports which are badly written or fail to address directly the issues or physician misconduct being alleged. The expert reviewer selection function is the responsibility of the MC, not the investigative staff." As examples of this problem, DAG Ladendorf cited instances where the expert witness at a recent hearing regarding the quality of medical care provided at a childbirth had not delivered a baby in ten years, and where the expert provided by an MC at another hearing had spent the past five years writing a cookbook, not practicing medicine. These problems make MBC's experts easily impeachable by the respondent physician's defense counsel and can result in the Board's failure to sustain its burden of proof.

Finally, Lancara's report noted that many MCs resist any supervisory attempts by the Board's regional office supervising investigators (who are not physicians). The report included exhibits indicating that certain MCs have little awareness of their role in the disciplinary process and the importance of their monitoring the progress of expert medical reviewers in analyzing a case, setting clear time

deadlines for the expert reviewer performance of contracted-for duties, and "identify[ing] and vigorously dissect[ing], challeng[ing], and resolv[ing] clear medical issues or inconsistencies in the expert reviewer report." Lancara called for a greater "teamwork" attitude between medical consultants and regional supervisors, as has been established between MBC's enforcement staff and the AG's Office.

Lancara's report was vehemently contested by Chief Medical Consultant Dr. Ikeda, who staunchly defended the performance of the medical consultants. He cited the Board's statistical success record in disciplinary cases taken to hearing, and contended that MBC would not prevail in cases if the MCs' performance was as dismal as characterized by Lancara and Ladendorf. Somewhat disturbingly and apparently contrary to the MCs' SPB job description, Dr. Ikeda disagreed that MCs are responsible for the selection of expert reviewers and expert witnesses, instead contending that investigative staff is responsible for this function. The two sides' public disagreement over this fundamental issue illustrated the general lack of communication and understanding between these two components of MBC's enforcement program, which must be resolved if California consumers are to be adequately protected from incompetent physicians.

At the end of the discussion, Lancara noted that he intends to work with MBC's Task Force on Medical Quality Resources to revamp the job description of the medical consultants and expert reviewers, establish performance standards for both, and clarify the supervision issue with regard to MCs.

• ***"Bad Doctor" Profile***. Another issue addressed at the Summit was the feasibility of analyzing common characteristics of complained-of and/or disciplined physicians, which might eventually be used to identify and proactively address high-risk licensees. *[13:2&3 CRLR 81]* Among other things, MBC members directed DOL to conduct an audit of a sample of physicians currently under investigation to determine whether they have complied with the Board's continuing medical education (CME) requirements.

Over the summer, DOL audited the CME compliance record of 250 physicians currently under investigation. Of these 250, 183 (74%) were in compliance and 67 (26%) were not. Of the 67 who failed, 26 (10%) failed to respond, 32 (13%) reported insufficient credits, 6 (2%) failed to provide documentation but indicated their documentation was forthcoming, and 3 (1%) notified the Board of their intent to apply for a waiver of the CME requirement as a result of disability or retirement and have not returned the completed waiver application.

DOL is uncertain as to what conclusions may properly be drawn from this audit. Of some note, 80–85% of audited physicians are typically in compliance with the Board's CME requirements, and this special audit reveals a 7–12% lower compliance rate. Copies of these CME audits have been forwarded to the CCICU, which will attempt to draw a correlation between failure of the CME audit and the offenses alleged to have been committed by the subject physicians.

• ***Citation and Fine Regulations***. On September 13, DMQ held a public hearing on its proposal to adopt regulations establishing a citation and fine mechanism. Since 1987, DMQ has been authorized to implement a system of citations and fines to handle violations of the Medical Practice Act which may not warrant a full-blown disciplinary hearing, but declined to exercise that authority until the Medical Summit earlier this year. *[13:2&3 CRLR 79–80]*

Specifically, DMQ proposes to add section 1364.10 to Division 13, Title 16 of the CCR, to authorize "board officials" to determine when and against whom a citation and fine should be issued, and to issue citations and fines. Citations (which may include orders of abatement and may be accompanied by a fine) must be in writing and must describe with particularity the nature and facts of the violation, including a reference to the statute or regulation alleged to have been violated. The section lists 64 provisions of the Business and Professions Code, the violation of which may justify the issuance of a citation and/or fine; citations and fines may also be issued for unlicensed practice. A cited individual is entitled to request an informal conference with the board official who issued the citation; such a conference must be held within thirty days of the request, and the board official must thereafter issue a formal decision in writing, including the reasons for the action. If the cited individual is still unsatisfied, he/she may request a formal hearing pursuant to section 125.9 of the Business and Professions Code.

At the September 13 hearing, Center for Public Interest Law Supervising Attorney Julie D'Angelo testified in support of the proposed regulatory scheme, noting that CPIL has long advocated the use of mid-level sanctions for lesser statutory and regulatory violations which may not warrant the expenditure of resources required by a full disciplinary proceeding but are nonetheless violations and should not be ignored. The addition of citations and fines gives DMQ an additional weapon in its enforcement arsenal. She also noted that the regulatory scheme ensures due process for the respondent physician, and stated that it is consistent with the citation and fine mechanisms successfully implemented by other Department of Consumer Affairs agencies since 1987. Finally, she stated that the regulatory scheme, as proposed, "gives the Division's enforcement staff the proper level of prosecutorial discretion which it must be allowed to exercise if physicians are to be treated fairly and the public is to be protected."

California Medical Association representatives Tim Shannon and Sandra Bressler took issue with several aspects of the proposed citation and fine regulations. They first objected to the rules' delegation of citation and fine authority to "board officials," defined in the rules as the "chief, deputy chief or area supervisor of the enforcement program of the board or the program manager of the Division of Licensing of the board." CMA argued that this broad delegation of authority "creates a high probability of inconsistent penalties for the same or similar violations." CMA also objected to the fact that the scheme appears to delegate final disciplinary authority to Board staff, when only DMQ is authorized to make final disciplinary decisions. Finally, CMA objected to the inclusion of numerous Code sections in the list of violations for which citations and fines may be appropriate, contending that many are quality of care violations and that only non-quality of care offenses should be addressable by a citation and fine sanction.

Following lengthy discussion, DMQ referred the proposed rules back to staff with instructions to meet with CMA, CPIL, and other interested parties and consider the comments made at the hearing. Enforcement Chief John Lancara plans to issue a modified version of the regulations for an additional 15-day comment period and to bring the new version to DMQ at its November meeting.

Other MBC Rulemaking. The following is a status update on other rulemaking proceedings undertaken by MBC's divisions over the past few months.

• ***SB 2036 Rules Pending***. On September 7, MBC submitted to the Office of Administrative Law (OAL) a modified version of proposed new section 1363.5, Title 16 of the CCR, which would implement SB 2036 (McCorquodale) (Chapter 1660, Statutes of 1990). The new regulation defines the terms "specialty board" and "specialty or subspecialty area of

medicine," and establishes standards for private specialty boards whose members may advertise that they are "board certified" in California. *[13:1 CRLR 47; 12:4 CRLR 90–91]* At this writing, the rulemaking package is pending at OAL.

• ***Revised CME Regulations Approved.*** On August 26, OAL approved DOL's revisions to sections 1337 and 1337.5, Title 16 of the CCR, which conform DOL's continuing medical education (CME) regulations to AB 3635 (Polanco) (Chapter 331, Statutes of 1992). The amendments expand acceptable CME coursework to include classes on the business aspects of the practice of medicine, and specify that DOL must accept CME courses related to preventive medicine, quality assurance or improvement, risk management, health facility standards, the legal aspects of clinical medicine, bioethics, professional ethics, and the improvement of the physician-patient relationship. *[13:2&3 CRLR 82]*

• ***DOL Rulemaking.*** On September 17, DOL published notice of its intent to hold a public hearing at its November 4 meeting on three proposed regulatory changes. First, DOL plans to amend section 1301, Title 16 of the CCR, to authorize the referral of licensing cases to the Division's Application Review Committee or its Special Programs Committee at the request of the applicant, a Division member, or the DOL Program Manager (*see "DOL Entertains CPIL Petition for Rulemaking" below*). DOL also seeks to amend section 1321 to delete an inaccurate reference to "hospitals," and to add new section 1354 to establish a fee which DOL will collect from specialty boards or associations applying for approval under the Board's new SB 2036 regulations (*see above*).

• ***DAHP Rulemaking.*** At its November 4 meeting, DAHP is scheduled to hold a public hearing on its proposed amendment to section 1366.3, Title 16 of the CCR, which presently provides that a qualified medical assistant (MA) is one who is currently certified by the American Association of Medical Assistants. DAHP's amendment would include the American Association of Medical Technologists as a certifying body for qualified MAs who provide training to other MAs under the direction of a licensed physician.

Feasibility of Establishing MBC as an Independent Agency. At its July 30 meeting, the full Board heard a report from DOL member Dr. John Lungren, chair of MBC's Committee on the Feasibility of Establishing the Medical Board as an Independent Agency. For several years, Dr. Lungren and other Board members have been dissatisfied with the level of support which MBC receives from the Department of Consumer Affairs, and have discussed the possibility of transforming MBC into a department within the Health and Welfare Agency or a completely independent agency like the State Bar. *[11:2 CRLR 80–81; 11:1 CRLR 68; 10:4 CRLR 81]*

In its report, the Committee stated that MBC, as one of the largest constituent agencies within DCA, is required to pay DCA over $2.3 million each year in "pro rata costs" for various services provided by the Department. However, the report contended that DCA is not necessarily providing the services for which MBC is paying; the report claims that MBC's own staff provide a variety of consumer and administrative services to augment those for which it pays pro rata costs to DCA, to the tune of $3.8 million per year. Thus, MBC is paying over $6 million per year of its current $29 million annual budget for administrative services. Further, the report indicated that in return for each agency's pro rata costs, DCA provides numerous services which the Medical Board does not need or use; however, MBC is not able to "opt out" of paying for these services.

The report then focused on the costs of becoming an independent agency, noting that MBC would need either to contract with an outside agency or hire additional staff to perform services and functions now provided by DCA. In the latter case, the Committee determined that MBC would save $700,000 per year by becoming independent of DCA. Equally important, the report argued that separation from DCA and the requirement that DCA approve MBC's regulations and changes to its programs would rid MBC of the current "'middle level' pass through...layer of review and resulting delay in accomplishing our mission and goals of protecting the public....[W]e would streamline the process by removing the middle level review and approval process which would result in immediate and increased productivity and efficiency."

Dr. Lungren acknowledged that "the present time may not offer the political and economic climate conducive to seeking an author for legislation that would allow the Board to become an independent agency," noting that the trend in Sacramento has been in the opposite direction. For the past several years, the Legislative Analyst's Office has advocated the abolition of all the separate agencies within DCA and an assumption of the boards' regulatory functions by the Department. *[13:2&3 CRLR 35; 12:2&3 CRLR 53]* However, Dr. Lungren urged MBC members to persist in removing the Board from DCA, arguing that "if the Board is to be held accountable and responsible for effective performance, it should be given control over the resources necessary to perform."

MBC Executive Director Dixon Arnett commended Dr. Lungren and the Board staff who assisted him in compiling the report, calling the findings "immensely valuable." The Board agreed that its new Committee on Audit and Performance Standards should follow up on the Committee's work and continue its efforts to leave DCA or require DCA to deliver the services for which it is being paid.

DOL Entertains CPIL Petition for Rulemaking. At its July 29 meeting, DOL reviewed a petition for rulemaking filed by the Center for Public Interest Law regarding DOL's Application Review Committee (ARC). The ARC, which consists of four DOL members, meets in closed session prior to every DOL meeting to review applications for licensure which present nonroutine problems for staff. The ARC makes final, binding decisions as to the eligibility of a candidate to become licensed and/or to move forward in the licensing process. Its closed-door decisions are not reviewed or ratified by DOL; they are simply reported to DOL in anonymous fashion at public DOL meetings. The ARC was created by DOL vote at its March 1988 meeting, and its duties and authorities are spelled out in a document attached to the minutes of that meeting.

CPIL's petition set forth two points. First, CPIL contended that, since the ARC is exercising DOL's licensing authority, DOL is required to establish the ARC through the formal Administrative Procedure Act (APA) rulemaking process. Specifically, CPIL believes DOL should adopt regulations defining the composition and function of the Committee, the applicable standards for the ARC's review of applications, the method by which staff refers cases to the Committee, any provisions whereby an applicant may request a rehearing, the method of DOL ratification of ARC recommendations, the term of appointment of ARC members, and the party(ies) authorized to appoint Committee members. DCA legal counsel Greg Gorges analyzed this portion of CPIL's petition and advised DOL to grant CPIL's petition to the extent that the Division should commence the rulemaking process to formally delegate the Division's licensing authority to the ARC and set forth the methods by which cases are referred to the Committee (*see "DOL Rulemaking" above*).

The other half of CPIL's petition argued that the ARC's meetings must be

held in public under the Bagley-Keene Open Meeting Act, Government Code section 11120 *et seq.* Specifically, CPIL contended that (1) the ARC is a "state body" as defined in Government Code sections 11121.2 and 11121.7; (2) as a "state body," it is required to meet in public unless one of the exemptions in Government Code section 11126 apply; (3) section 11126(c), which DOL uses to justify the closed sessions of the ARC, is inapplicable to the ARC as it is reserved for advisory bodies, and the ARC is not an advisory body; and (4) no other exemption to the public meeting requirement of the Bagley-Keene Act is applicable. For example, Government Code section 11121.8 permits advisory committees consisting of two or fewer persons to meet in private. This provision does not apply to the ARC because it consists of four persons and is not an advisory body. Therefore, CPIL argued that the ARC is required to meet in public.

The Division took no action on CPIL's latter argument, instead referring it to legal counsel for further analysis.

DAHP Discusses Its Imminent Abolition. At its July 29 meeting, DAHP discussed the inclusion of a provision in SB 916 (Presley) abolishing the Division (*see above*), and the probability that the bill would be passed and signed. As now enacted, the sunset of DAHP becomes effective on July 1, 1994, and DAHP members with remaining terms will be transferred to DMQ on that date. Two issues were addressed by Division members: the future of the allied health licensing programs (AHLPs) which currently function under the jurisdiction of DAHP, and the role of the "Committee on Allied Health Professions" established in SB 916.

As to the first issue, DAHP Program Manager Tony Arjil noted that AB 1807 (Bronshvag), the Department of Consumer Affairs' omnibus bill, might be amended to include provisions establishing most of the AHLPs as independent DCA agencies. However, the September 8 version of AB 1807 does not resolve this issue and, in any event, was stalled at the last minute and became a two-year bill. At this writing, the future of the AHLPs is scheduled for discussion at a series of hearings to be held in October and November by the Subcommittee on Efficiency and Effectiveness in State Boards and Commissions of the Senate Business and Professions Committee, and will probably be the subject of an urgency bill sponsored by DCA early in 1994.

Arjil noted that one possible solution to this issue would be to leave the AHLPs in place and subject to the jurisdiction of MBC and its new Committee on Allied Health Professions created in SB 916. However, SB 916 does not delegate jurisdiction over the AHLPs to the new Committee or the Medical Board, so this option would require new legislation. Further, if MBC jurisdiction over these programs is retained, any efficiency sought to be gained through the abolition of DAHP would be lost, as the Committee's recommendations relating to these programs would be required to be reviewed and approved by the full Board.

With regard to the new Committee, the language of SB 916 is quite broad and is apparently intended to allow MBC to develop its own guidelines for the functioning of the Committee. In this area, MBC is apparently going to rely on the recommendations of DAHP. Thus, in its remaining meetings prior to July 1, 1994, DAHP will work on compiling recommendations as to the precise function, membership, and jurisdiction of the Committee on Allied Health Professions.

LEGISLATION

SB 916 (Presley), as amended September 8, is a 62-part bill sponsored by the Center for Public Interest Law to compel further structural reforms to MBC's physician discipline system. The bill, which was successfully negotiated by CPIL, MBC, CMA, the Attorney General's Office, the Judicial Council, and representatives of Senator Robert Presley and Senator Dan Boatwright, was signed by the Governor on October 11 (Chapter 1267, Statutes of 1993). (*See* MAJOR PROJECTS above for a detailed description of the bill.)

SB 743 (Boatwright), as amended August 30, provides that a physician who engages in sexual contact, as defined, with a patient or client, or with certain former patients or clients, is guilty of sexual exploitation, with certain exceptions. The bill also changes the definition of the term "sexual contact" and requires prosecution of a misdemeanor violation of this provision to be commenced within two years after commission of the offense. This bill was signed by the Governor on October 10 (Chapter 1072, Statutes of 1993).

AB 891 (Speier), as amended September 7, requires, commencing July 1, 1994, a physician, at the time of license renewal, to report a financial interest, as described, of the physician or immediate family, as described, in a health-related facility, as defined, to MBC. The bill requires the report to be made on a form provided by the Board, and makes the information so reported available to government agencies and public or private payers. The bill authorizes MBC to impose sanctions against a licensee for failure to comply. This bill was signed by the Governor on October 11 (Chapter 1238, Statutes of 1993).

AB 919 (Speier), as amended September 3, provides that it is a misdemeanor for a physician to refer persons for certain diagnostic tests and ancillary services, if the physician has a financial interest with the person or in the entity that receives the referral. The bill also provides that it is unlawful for a physician to enter into certain arrangements or schemes, such as cross-referral arrangements. This bill was signed by the Governor on October 11 (Chapter 1237, Statutes of 1993).

AB 2046 (Margolin), as amended August 26, requires, commencing July 1, 1994, a clinical laboratory to provide, upon request, to each of its referring providers, as defined, a schedule of fees for prescribed services. The bill requires, commencing July 1, 1994, a clinical laboratory that provides a list of laboratory services to a referring provider or to a potential referring provider to include a schedule of fees for the laboratory services listed. This bill was signed by the Governor on September 28 (Chapter 593, Statutes of 1993).

AB 179 (Snyder). Existing law provides that it is unlawful for any person licensed by MBC to charge, bill, or otherwise solicit payment from any patient, client, or customer, for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, unless the patient, client, or customer is apprised at the first, or any subsequent, solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. As amended June 18, this bill deletes the requirement that the patient, client, or customer be apprised for any subsequent solicitation for payment of the name, address, and charges. The bill prohibits this provision from applying to a clinical laboratory of a health facility, as defined, or a health facility when billing for a clinical laboratory of the facility, or to any person licensed for one of those practices, if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges. This bill was signed by the Governor on August 25 (Chapter 304, Statutes of 1993).

SB 1178 (Kopp), as amended August 26, requires physicians and dentists to refund any amount paid by a patient for services rendered that constitutes a duplicate payment. A violation of the new provision constitutes unprofessional conduct. This bill was signed by the Governor on October 2 (Chapter 765, Statutes of 1993).

SB 350 (Killea), as amended September 7, repeals existing provisions related to the certification of lay midwives by DAHP and enacts the Licensed Midwifery Practice Act of 1993; specifies the requirements for licensure as a midwife and the authority of a midwife with respect to the scope of the practice of midwifery; requires DOL to issue a license to practice midwifery to all applicants who meet certain requirements and who pay a prescribed fee; provides for the expiration and renewal of licenses and authorizes MBC to suspend or revoke a license for certain reasons; requires every policy of disability insurance issued, amended, or renewed on or after January 1, 1994, that offers coverage for perinatal services, to contain a provision for direct reimbursement to licensed midwives for perinatal services; requires reasonable consideration, as defined, to be given to licensed midwives by disability insurers contracting for services at alternative rates; and requires that midwifery services provided by a licensed midwife also be covered by Medi-Cal to the extent federal financial participation is available. This bill was signed by the Governor on October 11 (Chapter 1280, Statutes of 1993).

SB 112 (Roberti), as amended August 23, requires the Department of Health Services to review its written summary which informs patients of alternative efficacious methods of treatment for breast cancer commencing no later than January 1, 1995, and every three years thereafter, and requires that specified additional information be included in the next revision of the written summary. This bill also requires MBC to establish a distribution system for the written summary that is linked to the physician license renewal process. This bill was signed by the Governor on October 1 (Chapter 657, Statutes of 1993).

AB 601 (Speier), as amended July 12, requires every person or entity who owns or operates a health facility or clinic, or who is licensed as a physician, to post a sign or notice with prescribed wording relating to alternative efficacious methods of treatment for breast cancer or prostate cancer, where breast cancer screening or treatment or prostate cancer screening or treatment, respectively, is performed. This bill was signed by the Governor on October 1 (Chapter 658, Statutes of 1993).

AB 890 (B. Friedman), as amended September 1, adds a course providing training and guidelines on how to routinely screen for signs exhibited by abused women to the list of subjects which MBC should consider when determining continuing education requirements for physicians. The bill also requires MBC to periodically develop and disseminate informational and educational material regarding the detection and treatment of spousal or partner abuse, and adds spousal or partner abuse detection and treatment to the subjects required to be included in the curriculum required for license applicants matriculating on or after September 1, 1994. This bill was signed by the Governor on October 11 (Chapter 1234, Statutes of 1993).

AB 1676 (Margolin), as amended August 30, provides that the application and rendering by any person, as defined, of a decision that penalizes a physician principally for advocating for medically appropriate health care, as defined, violates public policy. The bill requires that these provisions not be construed to prohibit a payer from making a determination not to pay for a particular medical treatment or service, to prohibit certain entities from enforcing reasonable peer review or utilization review protocols, or to prevent MBC from taking disciplinary actions authorized by existing law.

This bill was sponsored by the California Medical Association in response to numerous and increasing numbers of complaints from physicians who say they have been terminated by managed health care plans, physician groups, physician networks, and others allegedly as a consequence of having challenged the utilization review decisions of those organizations on behalf of their patients. CMA notes that, under caselaw, a physician may be held liable for harm to a patient resulting from erroneous utilization review or cost containment decisions if he/she fails to protest such decisions on behalf of appropriate health care for his/her patient. The physician must comply with this obligation, but allegedly has no recourse if he/she is terminated or penalized by third-party payers as a result, because current caselaw requires such public policy to be expressed clearly in statute—thus CMA's sponsorship of this bill. AB 1676 was signed by the Governor on October 8 (Chapter 947, Statutes of 1993).

ACR 34 (O'Connell), as introduced March 5, requests MBC to conduct and complete a survey of existing medical school curricula to determine whether medical students receive adequate training in, and whether physicians understand, pain management and palliative care techniques for the terminally ill; the measure also requests MBC to make recommendations to the legislature on necessary modifications in the medical school curriculum. This measure was chaptered on September 3 (Chapter 77, Resolutions of 1993).

AB 2316 (V. Brown), as amended September 2, would have required, with certain exceptions, any physician who provides primary care to a patient, as defined, and sells, closes, or transfers his/her medical practice to notify each patient, with certain exceptions, in writing, of the sale, closure, or transfer, and of the intended disposition of the patient's medical records, at least thirty days prior to the intended sale, closure, or transfer of his/her medical practice, and to advise each patient that they have thirty days to direct that their records be transferred or sent only to the licensee of their choice without any cost to the patient to transfer or direct these records to another licensee. This bill was vetoed by the Governor on October 11.

AB 251 (Alpert), as amended August 18, would have established the California Medical Physics Practice Act, which would have provided for the licensure of medical physicists, as defined, by DHS. This bill was vetoed by the Governor on October 11.

SB 1048 (Watson), as introduced March 5, and **AB 260 (W. Brown)**, as amended April 12, would each establish the Clean Needle and Syringe Exchange Pilot Project, and would authorize physicians, among others, to furnish hypodermic needles and syringes without a prescription or permit, as prescribed. SB 1048 is a two-year bill, while AB 260 was vetoed by the Governor on October 8.

AB 2170 (Bornstein), as amended September 8, is no longer relevant to MBC.

SB 366 (Boatwright), as introduced February 19, would permit DMQ to investigate complaints from a member of MBC that a physician may be guilty of unprofessional conduct. *[A. Health]*

SB 971 (Rosenthal), as introduced March 5, would prohibit a health facility from permitting an intern or resident from working in the facility an excessive number of hours in a day or week so as to endanger the health or safety of a patent of the facility. *[S. H&HS]*

AB 929 (Horcher), as introduced March 1, would provide that if the trier of fact at a private peer review proceeding determines that the person who filed the complaint against the physician knowingly made a false accusation, the complained-of MBC licensee may seek civil remedies against his/her accuser. *[A. Jud]*

AB 720 (Horcher), as introduced February 24, would prohibit any person other than a licensed physician, podiatrist, or dentist from applying laser radiation to any person for therapeutic purposes; any person who violates this provision would be guilty of a misdemeanor. *[A. Health]*

SB 437 (Hart), as amended April 26, would partially authorize, notwithstanding existing provisions of law, supervision of a physical therapy aide by a physical therapist and would authorize a physician to supervise a physical therapy aide who is employed by the physician and who is authorized to provide services by specified provisions of law. *[S. B&P]*

AB 595 (Speier), as amended August 25, would prohibit, on and after January 1, 1996, any physician from performing surgery in an outpatient setting using specified anesthesia unless the setting is one of enumerated health care settings, including a setting accredited by an accreditation agency, as defined, approved by DOL; prohibit an association, corporation, firm, partnership, or person from operating, managing, conducting, or maintaining an outpatient surgical setting, as defined, unless the setting is one of those enumerated settings; require DOL to adopt standards for accreditation in accordance with prescribed criteria; require DOL to adopt standards for approval of accreditation agencies to perform accreditation of outpatient surgical settings; and permit DOL or an accreditation agency to inspect outpatient surgical settings accredited by an accreditation agency. *[S. H&HS]*

SB 140 (Kopp), as amended May 5, would establish that providers of medical care are not liable for the release of a patient's non-medical information unless the patient had made a prior written request to the contrary. *[S. B&P]*

AB 1291 (Speier), as amended July 2, is similar to AB 919 (Speier) above, but would apply only to a referral of a person for whom all or part of the costs of the referral are paid pursuant to Medi-Cal, the Public Employees' Retirement Law, or the Public Employees' Medical and Hospital Care Act. *[S. B&P]*

SB 1125 (Calderon), as amended May 19, would require the Department of Consumer Affairs to conduct a prescribed study of costs for clinical laboratory tests and to report the results to the legislature on or before May 1, 1994. *[S. B&P]*

AB 1294 (Lee), as introduced March 3, would repeal provisions of law which require that a certificate be obtained prior to engaging in the practice of midwifery. Instead, this bill would enact the Licensed Midwifery Practice Act of 1993, establishing within DAHP a Licensed Midwifery Examining Committee, which would issue licenses to all applicants who meet certain requirements promulgated by the Committee. The bill would also authorize the Committee to adopt regulations to carry out the Act, and would require that a physician be consulted in the event of any significant deviation from normal. *[A. Health]*

AB 1689 (Statham), as amended April 20, would provide a tax credit of $5,000 for a taxpayer who is a qualified health care practitioner with a practice that is certified by the Office of Statewide Health Planning and Development to consist of at least 60% underserved rural patients. *[A. Rev&Tax]*

AB 1446 (Margolin), as introduced March 3, would require an applicant for a reciprocity MBC license to provide on the application a statement as to whether the employment or practice of the applicant has been suspended or terminated, or whether the applicant has resigned or taken a leave of absence from employment or practice, due to certain medical disciplinary investigations, causes, or reasons. *[S. B&P]*

SB 993 (Kelley), as introduced March 5, would state the intent of the legislature that all legislation becoming effective on or after January 1, 1995, which either provides for the creation of new categories of health care professionals who were not required to be licensed on or before January 1, 1994, or revises the scope of practice of an existing category of health professional, be supported by expert data, facts, and studies, including prescribed information. *[S. B&P]*

AB 1392 (Speier), as amended July 1, would require MBC, along with every other agency within DCA, to notify the Department whenever any complaint has gone thirty days without any investigative action, and authorize the DCA Director to review any complaint filed with MBC. *[S. B&P]*

AB 1907 (Knight), as amended April 21, would—under specified circumstances—exempt a physician who, in good faith and without compensation, renders voluntary medical services at a privately operated shelter from liability for any injury or death caused by an act or omission of the physician when the act or omission does not constitute gross negligence, recklessness, or willful misconduct. *[A. Jud]*

AB 2036 (Mountjoy), as introduced March 5, would authorize MBC to issue an emergency order suspending a license, but only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions that violate the Medical Practice Act, and that the continued practice by the licensee pursuant to his/her license will endanger the public health, safety, or welfare. This bill would require a hearing to be conducted before an emergency suspension order is issued, unless it appears from the facts shown by affidavit that serious injury would result to a patient or to the public before the matter can be heard on notice. *[A. Health]*

AB 2214 (Lee), as introduced March 5, would require any physician who sells, closes, or transfers his/her medical practice to notify each patient in writing, and require that each patient be given an opportunity to determine where his/her records shall be directed. *[A. Health]*

AB 2156 (Polanco), as amended May 25, would require reports filed with MBC by professional liability insurers to state whether the settlement or arbitration award has been reported to the federal National Practitioner Data Bank. *[S. Inactive File]*

AB 1807 (Bronshvag), as amended September 8, would increase the initial and renewal license fee required to be paid by physicians; authorize MBC to charge a fee for oral examinations; and revise educational, examination, and experiential requirements for licensure as a physician. *[A. Inactive File]*

AB 2241 (Murray), as amended September 10, and **SB 1166 (Watson)**, as amended September 10, would each create the Naturopathic Physicians' Practice Act and establish the Naturopathic Physicians' Examining Committee within DAHP. *[A. Health, S. B&P]*

LITIGATION

On August 30, the Attorney General's Office filed its amended answer to allegations made in ***California Medical Ass'n v. Hayes***, No. 374372 (Sacramento County Superior Court). In this action, CMA challenges the legislature's authority, per the Budget Act of 1992–93, to require the transfer of moneys from MBC's Contingent Fund to the general fund. *[13:2&3 CRLR 85; 12:4 CRLR 1]* Approximately $2.7 million was transferred from MBC's fund to the general fund on June 30. Among other things, CMA contends that Business and Professions Code section 2445 expressly forbids the transfer of Medical Board special fund moneys to the general fund, and that the legislature and Governor are not authorized to amend that substantive law through the Budget Act. On behalf of the state, the AG argues that "the Legislature which created the Contingent Fund in the first instance, and established the fiscal procedures and authority governing it, retains the power by subsequent and more specific legislation, to appropriate its funds for other purposes, particularly, as here, where the appropriation is limited to specific circumstances, is designed to deal with a fiscal crisis of unique circumstances, and does not impair the integrity of the fund or the mission it sup-

ports." At this writing, all briefs have been filed and CMA's petition for writ of mandate is set to be heard on October 8.

Two actions challenging the validity of DAHP's medical assistant regulations—***California Optometric Ass'n v. DAHP*** and ***Engineers and Scientists of California v. DAHP***—have been consolidated into Case No. 532588 pending in Sacramento County Superior Court. *[13:2&3 CRLR 85–86]* At this writing, the Attorney General has answered all allegations, and a trial-setting conference is scheduled for December 6.

RECENT MEETINGS

At its July 30 meeting, MBC adopted the following mission statement: "The mission of the Medical Board of California is to protect consumers through proper licensing of physicians and surgeons and certain allied health professions and through the vigorous, objective enforcement of the Medical Practice Act."

Also on July 30 and with no discussion, the full Board adopted the Department of Health Services' (DHS) Guidelines for Preventing the Transmission of Bloodborne Pathogens in Health Care Settings. *[13:2&3 CRLR 82–83]* Although these guidelines were not adopted as regulations (either by DHS or MBC), they have the effect of law because, under Business and Professions Code section 2221.1, MBC licensees are guilty of unprofessional conduct if they "knowingly fail to protect patients by failing to follow infection control guidelines of the...board, thereby risking transmission of bloodborne infectious diseases" from patient to provider, provider to patient, or patient to patient.

Also on July 30, MBC established a new Task Force on Health Policy and Resources, chaired by DOL member Dr. Robert del Junco, to investigate and address emerging policy issues which have a direct impact on the mission of the Board. MBC's creation of the Task Force was prompted by a study conducted by Dr. del Junco which indicated a major cultural gap between concentrated populations of primarily non-English-speaking patients and physicians/allied health professionals who speak only English. The Board also heard a report from its Appropriate Prescribing Task Force, which is discussing the feasibility of developing a continuing medical education course on proper prescribing practices for physicians. Inappropriate prescribing results in a large percentage of the Board's enforcement cases.

Dr. John Lungren, Dr. Madison Richardson, and Dr. John Kassabian, three longtime members of MBC, attended their last meeting on July 30, as their terms have expired. MBC honored these outgoing members with a luncheon and plaques of appreciation. At this writing, the Governor has not yet selected their replacements. Staff also announced that Assistant Executive Director Tom Heerhartz had accepted a position with the Department of Corrections effective July 1; his position is being reclassified to a "deputy director" position and his replacement is currently being recruited.

FUTURE MEETINGS

February 3–4 in San Francisco.
May 5–6 in Sacramento.
July 28–29 in Los Angeles.
November 3–4 in San Diego.

ACUPUNCTURE COMMITTEE

Executive Officer: Sherry Mehl (916) 263-2680

The Acupuncture Committee (AC) was created in July 1982 by the legislature as an autonomous body; it had previously been an advisory committee to the Division of Allied Health Professions (DAHP) of the Medical Board of California. AC still functions under the jurisdiction and supervision of DAHP.

Formerly the "Acupuncture Examining Committee," the name of the Committee was changed to "Acupuncture Committee" effective January 1, 1990 (Chapter 1249, Statutes of 1989). That statute further provides that until January 1, 1995, the examination of applicants for a license to practice acupuncture shall be administered by independent consultants, with technical assistance and advice from members of the Committee.

Pursuant to Business and Professions Code section 4925 *et seq.*, the Committee issues licenses to qualified practitioners, monitors students in tutorial programs (an alternative training method), and handles complaints against licensees. The Committee is authorized to adopt regulations, which appear in Division 13.7, Title 16 of the California Code of Regulations (CCR). The Committee consists of four public members and five acupuncturists. The legislature has mandated that the acupuncturist members of the Committee must represent a cross-section of the cultural backgrounds of the licensed members of the profession.

In late August, Governor Wilson announced the reappointment of Mary Jane Barnett, Angela Ying Tu, and Jeanne Tumanjan to AC. All three reappointed Committee members await Senate confirmation.

MAJOR PROJECTS

AC Rulemaking Update. Following is a status update on several AC rulemaking packages discussed in detail in previous issues of the *Reporter*.

• At its February 1993 meeting, AC adopted amendments to sections 1399.417 (grounds for application abandonment), 1399.441 (languages in which AC's exam will be administered), 1399.480 (acceptability of continuing education (CE) courses related to business management and medical ethics), 1399.487 (four hours of CE per year in business management and medical ethics), and 1399.485 (completion of additional CE by inactive licensees seeking to reactivate their licenses), and adopted new sections 1399.486 (required curriculum for additional CE under Business and Professions Code section 4945.5) and 1399.444 (licenses expired for more than five years). *[13:2&3 CRLR 86; 13:1 CRLR 50–51]* At its July 29 meeting, DAHP approved these regulatory changes; at this writing, these changes await review and approval by the Department of Consumer Affairs (DCA) and the Office of Administrative Law (OAL).

• At its May 26 meeting, AC approved modified amendments to section 1399.443, which requires applicants for AC licensure to achieve a passing score on its written and practical examinations "as determined by a criterion-referenced method of establishing the passing point on each part of the examination"; and section 1399.460, which implements AC's authority to establish a license renewal system based upon licensee birthdate. *[13:2&3 CRLR 86]* At this writing, these changes await review and approval by DAHP, DCA, and OAL.

• At its August 4 meeting, AC approved several additional regulatory changes. Specifically, AC adopted amendments to sections 1399.413 (applications for examinations must be received by AC 120 days prior to the exam), 1399.424(c) (application of training and experience obtained by a trainee prior to 1980 toward tutorial program credit), 1399.445 (appeals of practical exam results), and 1399.450 (acupuncturists must provide a bathroom in their offices), and adopted new sections 1399.463 and 1399.464 to implement its authority to issue a citation to an individual for violations of the agency's enabling act, and to provide a mechanism whereby a cited individual may appeal the issuance of a citation. *[13:2&3 CRLR 86–87]* At this writing, these changes await review and approval by DAHP, DCA, and OAL.

• Finally, AC is still awaiting DCA and OAL approval of its amendments to section 1399.439, which require AC-approved acupuncture schools to submit to AC a course catalog and specified information about the school's curriculum, faculty, and financial condition. *[13:1 CRLR 51; 12:4 CRLR 96]*

Consumer Education Brochure. At its May 26 and August 4 meetings, AC again reviewed the latest draft of its proposed consumer education brochure. [13:1 CRLR 50] After a lengthy discussion on the draft at the August meeting, AC Chair David Chen invited licensees and acupuncture schools to submit written comments on the brochure, which will be reviewed by AC's Executive Subcommittee and then by the full Committee at its next meeting.

Committee Adopts Mission Statement and Goals. At its August 4 meeting AC adopted the following mission statement: "The Acupuncture Committee is a board of licensed acupuncturists and public members appointed by State officials to protect the consumer, enforce regulations governing the profession, set education/examination standards for licensees, educate the public and promote Oriental Medicine to effectively serve the citizens of California."

AC also established several goals, including education of the public on acupuncture "and its use as a viable, cost effective and safe health care option," and participation "in the formulation of national health care policies and legislation to include acupuncture."

AC Reviews HIV Guidelines. Also at its August 4 meeting, AC reviewed the Department of Health Services' (DHS) Guidelines for Preventing the Transmission of Bloodborne Pathogens in Health Care Settings. *[13:2&3 CRLR 82–83]* DHS was required to issue these Guidelines under both state (Health and Safety Code section 1250.11) and federal (Public Law No. 102-141) law, and the guidelines must be equivalent to HIV transmission prevention guidelines issued by the Federal Centers for Disease Control in 1991. AC and other agencies regulating the health care professions must adopt DHS' guidelines or an equivalent set of guidelines; under existing law, a knowing failure to follow them by an acupuncturist, without good cause, is grounds for disciplinary action. AC will revisit this matter until its next meeting.

Committee Adopts Complaint Disclosure Policy. Also in August, AC decided that, in response to requests for information on licensees from consumers, it will not disclose the fact that it has completed an investigation against an acupuncturist and is proceeding against the acupuncturist's license until the formal accusation is filed by the Attorney General's Office. Due to a large backlog of cases and a one-year delay in the filing of accusations after formal disciplinary investigations are completed, many other DCA agencies have recently decided to disclose completed investigations to inquiring consumers at the point at which cases are referred to the AG's Office; AC declined to follow suit. (*See* agency report on MEDICAL BOARD for related discussion.)

LEGISLATION

SB 916 (Presley), as amended September 8, is a wide-ranging bill affecting the Medical Board of California (MBC) which—among other things—abolishes the Board's Division of Allied Health Professions, under whose jurisdiction AC currently functions. (*See* agency report on MBC for a complete description of SB 916.) This bill was signed by the Governor on October 11 (Chapter 1267, Statutes of 1993).

SB 842 (Presley), as amended July 14, permits AC to issue interim orders of suspension and other restrictions, as specified, against its licensees. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

AB 1807 (Bronshvag), as amended September 8, would provide that if, upon investigation, AC has probable cause to believe a person is advertising in a telephone directory with respect to the offering or performance of acupuncture services without being properly licensed by AC, the Committee may issue a citation containing an order of correction which requires the violator to cease the unlawful advertising. If the unlicensed person to whom a citation and order of correction is issued fails to comply with the order of correction after that order is final, AC shall inform the Public Utilities Commission (PUC) of the violation, and the PUC shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

Business and Professions Code section 4935 currently provides that an unlicensed person who holds himself/herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating specified terms, including the terms "oriental herbalist" or "certified herbalist," is guilty of a misdemeanor; this bill would delete those terms from section 4935.

Existing law requires a person who practices acupuncture to possess a license; this bill would provide that this requirement not be construed to prevent those engaged in a course or tutorial program in acupuncture from administering acupuncture treatment as part of the education program. This bill would also revise the qualifications required of an acupuncturist who may be approved to supervise an acupuncturist trainee; revise the fees relating to licensing of acupuncturists; and reduce the time within which an acupuncturist may renew his/her expired license from five to three years. *[A. Inactive File]*

RECENT MEETINGS

At its May 25 meeting, AC discussed its future in light of the probable July 1, 1994 abolition of MBC's Division of Allied Health Professions, due to a provision in SB 916 (Presley) (*see* LEGISLATION). The Committee has two options: remain under the jurisdiction of the Medical Board or seek legislation enabling it to become an independent board within DCA. AC unanimously passed motions to seek legislation freeing it from the Medical Board and changing its name to "Board of Acupuncture." AC may continue to contract with MBC's enforcement program for the intake and investigation of its discipline cases. Subsequent to AC's May 25 meeting, DCA amended its omnibus bill, AB 1807 (Bronshvag), to include language removing several allied health licensing programs from DAHP and MBC; however, that language encountered opposition at the end of the legislative year, was deleted, and the bill stalled on the Assembly floor. Thus, AC and DCA must resolve this issue during 1994.

FUTURE MEETINGS

To be announced.

HEARING AID DISPENSERS EXAMINING COMMITTEE

Executive Officer: Elizabeth Ware (916) 263-2288

Pursuant to Business and Professions Code section 3300 *et seq.*, the Medical Board of California's Hearing Aid Dispensers Examining Committee (HADEC) prepares, approves, conducts, and grades examinations of applicants for a hearing aid dispenser's license. The Committee also reviews qualifications of exam applicants, and is authorized to issue licenses

and adopt regulations pursuant to, and hear and prosecute cases involving violations of, the law relating to hearing aid dispensing. HADEC has the authority to issue citations and fines to licensees who have engaged in misconduct. HADEC recommends proposed regulations to the Medical Board's Division of Allied Health Professions (DAHP), which may adopt them; HADEC's regulations are codified in Division 13.3, Title 16 of the California Code of Regulations (CCR).

The Committee consists of seven members, including four public members. One public member must be a licensed physician and surgeon specializing in treatment of disorders of the ear and certified by the American Board of Otolaryngology. Another public member must be a licensed audiologist. Three members must be licensed hearing aid dispensers.

HADEC has one hearing aid dispenser vacancy. Governor Wilson is responsible for appointing a replacement for Byron Burton, whose term ended in December 1991 and whose grace year expired on December 31, 1992.

MAJOR PROJECTS

HADEC Discusses Electronic Examinations. Due to budgetary constraints, this year HADEC will hold all of its licensing exams in Sacramento instead of in locations throughout the state, as has been its previous longstanding practice. *[13:2&3 CRLR 88]* At HADEC's July 16 meeting, Committee member James McCartney, Ph.D., introduced Brent Edmonds and Ron Bock from Assessment Systems, Inc., a company that offers examination testing electronically. The Committee discussed the feasibility of computerized exams and watched as the equipment used for taking an examination electronically was demonstrated. HADEC approved electronic administration of its written examination and directed staff to request proposals from companies for this service. The Committee further authorized its Examination and Continuing Education Subcommittee to approve a contract for implementation of computerized testing in 1994. The Committee also requested Department of Consumer Affairs (DCA) legal counsel Greg Gorges to review the above items and present his suggestions at the Committee's November 12 meeting.

Future Consumer Protection Measures. In July, NBC's *Dateline* program aired a segment investigating the hearing aid dispensing industry nationwide. At HADEC's July 16 meeting, Executive Officer Elizabeth Ware discussed with the Committee some of the consumer protection issues raised on the program which HADEC should address via legislation and regulatory changes. *Dateline* primarily addressed the trainee license category and raised the issues of prohibiting out-of-office hearing aid sales by trainees unless fully supervised, requiring supervisors to countersign an audiogram and receipt at the time of sale, and requiring dispenser licensees to wait a specified period of time before they may supervise trainees. Other issues raised on the program include limiting down payments on hearing aid sales and requiring an associate of arts degree for dispenser licensure. The Committee directed Ware and Greg Gorges to develop possible legislative/regulatory language and present proposals for discussion at its next meeting.

Ware also drafted and circulated a proposed written response to *Dateline*. The letter stated that the program should have focused more on the measures which potential hearing aid purchasers can take to protect themselves from the kinds of fraud revealed in the segment. The Committee approved Ware's response.

Licensing and Continuing Education Update. At HADEC's July 16 meeting, staff reported that 68 temporary licenses were issued between February 5 and July 13, 1993, bringing the total number of temporary licenses to 111. Seventeen permanent licenses were issued during that same timeframe. HADEC's cumulative figures for permanent licenses includes 1,633 current licenses, 789 delinquent licenses, and 34 revoked licenses.

The total pass rate on HADEC's March 1 written examination was 36%; the pass rate on the May 3 written examination was 39%. The total pass rate for the June practical examination was 81%, which Dr. McCartney stated was the highest pass rate in HADEC's history and may be attributable to the new law requiring applicants to pass the written exam before they may take the practical examination. Written examinations were also held on July 26 and August 23, and the next practical examination is scheduled for November 6 in Sacramento.

Dianne Tincher, Licensing Program Coordinator, reported that an audit of HADEC licensees' compliance with its continuing education (CE) requirement had been completed for 1991 and 1992: 37 licensees did not complete any CE hours in 1991 or 1992; 194 licensees did not complete any CE hours in 1992; and 81 licensees did not complete any CE hours in 1991 and failed to make up the required hours in 1992. HADEC has mailed letters to these licensees requesting documentation of CE compliance.

LEGISLATION

SB 916 (Presley), as amended September 8, is a wide-ranging bill affecting the Medical Board of California (MBC) which—among other things—abolishes the Board's Division of Allied Health Professions, under whose jurisdiction HADEC currently functions. (*See* agency report on MBC for a complete description of SB 916.) This bill was signed by the Governor on October 11 (Chapter 1267, Statutes of 1993).

AB 1807 (Bronshvag), as September 8, would authorize HADEC to establish by regulation a system for an inactive category of licensure; repeal Business and Professions Code section 3365(g), which requires dispensers to state on receipts and contracts that any examination made by them must not be regarded as medical or professional advice; reduce the time within which a dispenser may renew his/her expired license from five to three years; and require applicants, as a condition of licensure as a hearing aid dispenser, to be at least 18 years of age and to possess a high school diploma or its equivalent. *[A. Inactive File]*

SB 595 (Rogers). Under existing law, the Public Utilities Commission implements programs whereby telecommunications devices are furnished to telephone subscribers who are deaf or hearing impaired and to statewide organizations representing the deaf or hearing impaired, and whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified as deaf or hearing impaired by a licensed physician or audiologist. As amended April 19, this bill would also permit the certification as deaf or hearing impaired to be made by a hearing aid dispenser if a physician has evaluated the hearing impaired individual's hearing. *[S. E&PU]*

AB 1392 (Speier), as amended July 12, would require DCA boards and committees, including HADEC, to notify DCA whenever any complaint has gone thirty days without any investigative action, and require DCA to determine when a backlog of complaints justifies use of DCA staff to assist in complaint investigation. *[S. B&P]*

RECENT MEETINGS

At its July 16 meeting, HADEC discussed its future in light of the probable July 1, 1994 abolition of MBC's Division of Allied Health Professions, due to a provision in SB 916 (Presley) (*see* LEGISLATION). Although the bill eliminates DAHP, it does not address whether HADEC and other allied health licensing programs will remain under the jurisdiction of MBC or become independent agencies within DCA. Executive Officer

Elizabeth Ware noted HADEC's desire to become independent of the Medical Board, and stated that she is working with DCA to draft appropriate legislative language to accommodate HADEC's transfer and ensure a smooth transition from MBC to DCA. Ware noted that HADEC would probably withdraw entirely from its shared services agreement with MBC, such that HADEC must absorb several services previously provided by MBC, including mailroom, license verifications, cashiering, complaint processing, and the legal desk. Ware stated that HADEC would prefer that the Health Quality Enforcement Section (HQES) within the Attorney General's Office continue to represent the Committee in disciplinary cases, but noted that HQES may not want to continue to handle HADEC cases if HADEC leaves MBC since it was created to work with MBC and its affiliated agencies. Subsequent to HADEC's July meeting, DCA amended its omnibus bill, AB 1807 (Bronshvag), to include language removing HADEC and several other allied health licensing programs from DAHP and MBC; however, that language encountered opposition at the end of the legislative year, was deleted, and the bill stalled on the Assembly floor. Thus, HADEC and DCA must resolve this issue during 1994.

HADEC Chair Molly Wilson announced that the July 16 meeting would be her last as Committee chair, as her term has expired and she is serving in a grace year. HADEC elected Keld Helmuth to replace Wilson as HADEC Chair, and Betty Cordoba as Vice-Chair.

FUTURE MEETINGS

To be announced.

PHYSICAL THERAPY EXAMINING COMMITTEE

Executive Officer: Steven Hartzell (916) 263-2550

The Physical Therapy Examining Committee (PTEC) is a six-member board responsible for examining, licensing, and disciplining approximately 14,200 physical therapists and 2,300 physical therapist assistants. The Committee is comprised of three public and three physical therapist members. PTEC is authorized under Business and Professions Code section 2600 *et seq.*; the Committee's regulations are codified in Division 13.2, Title 16 of the California Code of Regulations (CCR). The Committee currently functions under the general oversight of the Medical Board's Division of Allied Health Professions (DAHP).

Committee licensees presently fall into one of three categories: physical therapists (PTs), physical therapist assistants (PTAs), and physical therapists certified to practice kinesiological electromyography or electroneuromyography.

PTEC also approves physical therapy schools. An exam applicant must have graduated from a Committee-approved school before being permitted to take the licensing exam. There is at least one school in each of the 50 states and Puerto Rico whose graduates are permitted to apply for licensure in California.

The Committee is currently functioning with four members, including two public members and two PT members. Two of these members, public member June Koefelda and PT member John Richard Matthews, were recently appointed by Governor Wilson and took their seats on the Committee at the August 27 meeting. The Senate Rules Committee is responsible for appointing the remaining public member, and Governor Wilson must appoint the remaining PT member.

MAJOR PROJECTS

Proposed Legislation on Educational Standards for PTs and PTAs. At its August 27 meeting, PTEC reviewed the latest draft of proposed legislative changes to statutes setting forth the educational standards for licensure as a PT or PTA. *[13:2&3 CRLR 89]*

Among other things, the draft changes would amend Business and Professions Code section 2650, regarding PT licensure requirements, to require applicants to graduate from a professional degree program in an accredited postsecondary institution approved by PTEC, and to complete a professional education, including academic coursework which meets specified curricular requirements and a full-time, 18-week clinical internship in physical therapy. Additionally, these applicants must pass a written exam required by section 2636. Under revised section 2653, applicants for PT licensure who have graduated from a foreign school which is not PTEC-approved must demonstrate that they have the equivalent professional degree preparation of a U.S.-accredited educational program (including the clinical internship), furnish documentary evidence that they are entitled to practice physical therapy in the country in which the diploma was issued, and pass the written exam required by section 2636 (and possibly an additional oral exam). PTEC's August 27 draft deletes an existing requirement that foreign-trained PTs also complete a period of clinical service under the direct supervision of a PTEC-licensed PT.

PTEC's draft changes to Business and Professions Code section 2655 *et seq.*, regarding PTA educational requirements, delete existing language stating that PTAs are "registered" or "approved" and instead use the word "licensed." Persons applying for PTA licensure must graduate from a PTEC-approved school for PTAs whose curriculum meets specified requirements, including both clinical studies and clinical experience, and pass a written exam. Under the draft considered on August 27, the clinical studies portion of the educational program must "provide laboratory experiences in simulated patient treatment including the assessment of a patient's physiologic state and effectiveness of the treatment relative to the goals established by the physical therapist"; the clinical experience must be under the direct supervision of a supervising PT and must involve actual "physical therapy treatments" of patients of varying ages, disabilities, and diseases. In the absence of this degree, PTA applicants must have training or experience or a combination of training and experience which in PTEC's opinion is equivalent to that obtained in an approved PTA educational program, and pass a written examination. The draft proposal also sets forth conditions under which applicants who are licensed as PTAs in other states may become licensed in California without taking the written exam.

Other changes in the draft legislative proposal provide that a PT may not supervise more than two PTAs at any one time; require PTEC to adopt regulations setting forth standards and requirements for the adequate supervision of PTAs; and state that only a licensed PT may supervise a PTA or physical therapy aide.

The California Chapter of the American Physical Therapy Association (CCAPTA) registered four objections to the proposed language. First, CCAPTA opposes the use of the terms "licensure" and "license" as applied to PTAs, stating that consumers will be confused because "PTAs are not professionals but rather technicians." Second, CCAPTA renewed its objection to the elimination of the requirement that foreign-trained PTs engage in a period of clinical service under the direct supervision of a California-licensed PT prior to licensure. *[12:2&3 CRLR 114]* Third, CCAPTA dislikes the use of the word "assessment" with regard to the clinical studies portion of the PTA educational program, and suggests substitution of the word "measurement." Finally, CCAPTA proposed new language to describe the required content of the

PTA clinical experience requirement; CCAPTA's language deletes the requirement that PTAs engage in "physical therapy treatments" and substitutes "learning experiences for the PTA that address treatment."

Following discussion, PTEC tentatively agreed to incorporate CCAPTA's changes into the legislative draft, which is scheduled for further discussion at the Committee's October meeting.

Supervision Requirements/PTA Licensure Standards. At its August 27 meeting, PTEC again discussed two pending rulemaking packages—one pertaining to PTs' supervision and use of PTAs and physical therapy aides (proposed amendments to sections 1398.44, 1399, and 1399.1, Division 13.2, Title 16 of the CCR), and the other regarding PTA licensure standards (proposed amendments to section 1398.47). These regulatory changes were the subject of public hearings at PTEC's February and April meetings. *[13:2&3 CRLR 89; 13:1 CRLR 53]* Because the one-year deadline in Government Code section 11346.4(b) was fast approaching, the Committee decided to abandon these regulatory packages, discuss revised language at its October meeting, and notice that language for a public hearing on January 14.

Infection Control Guidelines. Also on August 27, PTEC adopted the Department of Health Services' (DHS) Guidelines for Preventing the Transmission of Bloodborne Pathogens in Health Care Settings. *[13:2&3 CRLR 82–83]* DHS was required to issue these Guidelines under both state (Health and Safety Code section 1250.11) and federal (Public Law No. 102-141) law, and the Guidelines must be equivalent to HIV transmission prevention guidelines issued by the federal Centers for Disease Control in 1991. Although these Guidelines were not adopted as regulations (either by DHS or PTEC), they have the effect of law because a knowing failure to follow them by a PTEC licensee, without good cause, is grounds for disciplinary action.

KEMG/ENMG Examination/Certification Controversy. On July 27, PTEC revisited an ongoing controversy over the exams it administers for certification in electroneuromyography (ENMG) and kinesiological electromyography (KEMG). PTEC administers one exam in KEMG and a separate exam in ENMG, and has always interpreted regulatory section 1399.65(a) to require an applicant for ENMG certification to first take and pass the KEMG exam, and then take and pass the ENMG exam. Recently, a candidate for ENMG certification requested that PTEC separate these two exams and certifications, such that KEMG certification is not necessary for ENMG certification and the two would be treated as separate specialties. *[13:1 CRLR 53]*

PTEC expressed interest in gathering further information and expert advice to determine criteria for educational requirements and regulations for each specialty. PTEC will address this issue at a future meeting.

LEGISLATION

SB 916 (Presley), as amended September 8, is a wide-ranging bill affecting the Medical Board of California (MBC) which—among other things—abolishes the Board's Division of Allied Health Professions, under whose jurisdiction PTEC currently functions. (*See* agency report on MBC for a complete description of SB 916.) This bill was signed by the Governor on October 11 (Chapter 1267, Statutes of 1993).

AB 1807 (Bronshvag). Existing law requires PTEC to approve a PTA applicant who is otherwise qualified and receives a grade of 75% on the required examination. As amended September 8, this bill would require PTEC to approve a PTA applicant who is otherwise qualified if he/she receives a passing grade on the examination.

Existing law sets fees for the initial PT license and renewal of a PT license at $80, unless a lower fee is set by PTEC. Due to PTEC's increased enforcement activity, this bill would increase the fee to $100, unless a lower fee is set by PTEC, and require PTEC to submit a report to the legislature whenever it increases any fee, specifying the justification for the increase and the percentage of the increase to be used for enforcement purposes.

On August 16, AB 1807 was amended to remove PTEC from the jurisdiction of DAHP, consistent with the abolition of DAHP in SB 916 (Presley) (*see above*); however, this provision was deleted on September 7, and AB 1807 subsequently stalled in the legislature. Thus, PTEC's future as an independent agency within the Department of Consumer Affairs must be resolved in 1994. *[A. Inactive File]*

SB 437 (Hart), as amended April 26, would authorize, notwithstanding existing provisions of law, a physician to supervise a physical therapy aide who is employed by the physician and who is authorized to provide services by specified provisions of law. *[S. B&P]*

PTEC opposes SB 437. Unlike PTs and PTAs, aides have no formal training or licensure requirements. PTs must comply with PTEC's supervision regulations in supervising aides, but SB 437 does not apply those supervision requirements to physicians who would be supervising physical therapy aides. If SB 437 is enacted, PTEC believes insurance companies will be billed by physicians for physical therapy treatment which is unskilled and inadequately supervised; in many cases, PTEC believes that patients will require treatment from a PT in addition to the treatment provided by an aide who works for a physician.

AB 512 (Burton), which requires that the membership of the Industrial Medical Council within the Department of Industrial Relations include a PT who shall be appointed by the Assembly Speaker, was amended into **SB 1005 (Lockyer)**, which was signed by the Governor on July 27 (Chapter 227, Statutes of 1993).

RECENT MEETINGS

PTEC cancelled its scheduled July 9 meeting because the resignation of one member in February and the June 30 expiration of the terms of two other members left it without a quorum.

At PTEC's August 27 meeting in Sacramento, new members June Koefelda and John Richard Matthews were introduced and participated in their first Committee meeting. The Committee adopted Executive Officer Steve Hartzell's proposal to send the fingerprints of all licensure applicants to the Department of Justice (DOJ) for a criminal records check. Hartzell advocated that PTEC participate in DOJ's program, which costs an additional $10 per applicant, because it protects public health and safety by enabling PTEC to prevent an applicant with criminal convictions from practicing as a PT.

Representatives of the Western Institute of Science and Health, a recently established provider of PTA training, requested that students in its PTA training program be allowed to take the PTA licensure examination based on the curriculum equivalency standards set forth in Business and Professions Code section 2655.3 and regulatory section 1398.47(a)(4) and (c). The Western Institute's curriculum has been temporarily approved by the state Council for Private Postsecondary and Vocational Education, and the Institute is in the process of seeking accreditation on the national level, but will be unable to obtain it until at least two PTA classes have graduated. The Western Institute is based in Rohnert Park in northern California. Currently, only one accredited PTA training program exists in northern California, and the Western Institute claims to have many candidates interested in its PTA program because of the lack of such programs in the surrounding area. The Committee

heard the request and took it under advisement, but postponed any decision on the issue until more information is gathered.

FUTURE MEETINGS

October 7 in Anaheim.
January 14 in Burbank (location tentative).
April 29 in Sacramento.

PHYSICIAN ASSISTANT EXAMINING COMMITTEE

Executive Officer: Ray Dale
(916) 263-2670

The legislature established the Physician Assistant Examining Committee (PAEC) in Business and Professions Code section 3500 *et seq.*, in order to "establish a framework for development of a new category of health manpower—the physician assistant." Citing public concern over the continuing shortage of primary health care providers and the "geographic maldistribution of health care service," the legislature created the physician assistant (PA) license category to "encourage the more effective utilization of the skills of physicians by enabling physicians to delegate health care tasks...."

PAEC licenses individuals as PAs, allowing them to perform certain medical procedures under a physician's supervision, including drawing blood, giving injections, ordering routine diagnostic tests, performing pelvic examinations, and assisting in surgery. PAEC's objective is to ensure the public that the incidence and impact of "unqualified, incompetent, fraudulent, negligent and deceptive licensees of the Committee or others who hold themselves out as PAs [are] reduced." PAEC's regulations are codified in Division 13.8, Title 16 of the California Code of Regulations (CCR).

PAEC's nine members include one member of the Medical Board of California (MBC), a physician representative of a California medical school, an educator participating in an approved program for the training of PAs, one physician who is an approved supervising physician of PAs and who is not a member of any division of MBC, three PAs, and two public members. PAEC functions under the jurisdiction and supervision of MBC's Division of Allied Health Professions (DAHP).

MAJOR PROJECTS

Diversion Program. At PAEC's July 23 meeting, staff announced that the Committee joined with seven other Department of Consumer Affairs agencies in issuing a request for proposals for a contractor to administer a joint diversion program. *[13:2&3 CRLR 90]* Occupational Health Services, Inc. (OHS), which has administered PAEC's diversion program for the past three years, was the successful bidder, and PAEC and the other agencies entered into a three-year contract with OHS commencing on July 1. The diversion program services provided by OHS to PAEC will remain essentially the same as before, but the cost to PAEC will be significantly lower. Under the previous contract, PAEC paid a blanket amount ($25,000 per year) to OHS for zero to ten participants; typically, there were only two PA participants in the program at any one time. PAEC will now pay $146 per month or $1,752 annually for each individual participant. While the participant pays a percentage of the cost, PAEC and its licensees fund the majority of the diversion program cost.

Infection Control Guidelines. At its July meeting, PAEC reviewed the Department of Health Services' (DHS) Guidelines for Preventing the Transmission of Bloodborne Pathogens in Health Care Settings. *[13:2&3 CRLR 82–83]* DHS was required to issue these Guidelines under both state (Health and Safety Code section 1250.11) and federal (Public Law No. 102-141) law, and the Guidelines must be equivalent to HIV transmission prevention guidelines issued by the federal Centers for Disease Control in 1991. If approved by PAEC, these Guidelines will have the effect of law because a knowing failure to follow them by a PA, without good cause, is grounds for disciplinary action. PAEC referred the Guidelines to a subcommittee for review, with instructions to report back at a future meeting.

LEGISLATION

SB 916 (Presley), as amended September 8, is a wide-ranging bill affecting the Medical Board of California (MBC) which—among other things—abolishes the Board's Division of Allied Health Professions, under whose jurisdiction PAEC currently functions. (*See* RECENT MEETINGS; *see also* agency report on MBC for a complete description of SB 916.) This bill was signed by the Governor on October 11 (Chapter 1267, Statutes of 1993).

SB 842 (Presley), as amended July 14, permits PAEC to issue interim orders of suspension and other restrictions as specified, against its licensees. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

AB 1065 (Campbell), as amended September 7, states the findings and declarations of the legislature regarding the shortage and declining proportion of family practice physicians in the United States, and the growing demand for medical care in California. This bill requires the Office of Statewide Health Planning and Development to coordinate the establishment of a pilot and an ongoing international medical graduate (IMG) PA training program, with the goal of placing as many international medical IMG PAs in medically underserved areas as possible in order to provide greater access to care for the growing population of medically indigent and underserved by training foreign medical graduates to become licensed as PAs at no cost to the participants in return for a commitment from the participants to serve in underserved areas.

This bill requires the Office, by February 1, 1994, or by a specified date after federal funds become available to implement these provisions, whichever occurs later, to establish a training program advisory task force to, among other things, develop a recommended curriculum for the training program, and requires the curriculum to be presented by the Office to the Committee on Allied Health Education and Accreditation of the American Medical Association for approval by April 1, 1994, or by a specified date after federal funds become available to implement these provisions, whichever occurs later.

This bill makes any person who has satisfactorily completed the program eligible for licensure by PAEC as a PA if the person has successfully completed the examination required for licensure as a PA, and has successfully completed the Test of English as a Foreign Language (TOEFL).

This bill also provides that the Attorney General may represent the Office, the Committee, or both in any litigation necessitated by this article, or if the Attorney General declines, authorizes the Office, the Committee, or both to hire other counsel for this purpose. This bill requires funds collected pursuant to its provisions to be allocated according to a prescribed formula.

This bill specifies the further duties of the Office of Statewide Health Planning and Development, including, but not limited to, determining those areas of the state that are medically underserved and would benefit from the services of additional persons licensed as PAs, and providing grants to applicant health care providers that provide services in medically underserved areas for the purpose of funding additional PA positions in those areas. This bill was signed by the Governor on October 10 (Chapter 1042, Statutes of 1993).

SB 633 (Deddeh). The Physician Assistant Practice Act authorizes a PA to perform medical services, as set forth by

the regulations adopted by DAHP, when the services are rendered under the supervision of a licensed physician or physicians approved by the Division. As amended July 13, this bill authorizes a PA to perform these medical services when the services are rendered during any state of war emergency, state of emergency, or state of local emergency, as defined, at the request of certain officials or agencies, or pursuant to the terms of a mutual aid operation plan, even if the approved supervising physician is not available, so long as a licensed physician is available to render appropriate supervision. This bill specifies that appropriate supervision does not require the personal or electronic availability of a supervising physician if that availability is not possible or practical due to the emergency. The bill authorizes local health officers to act as supervising physicians during emergencies without being subject to the requirement of approval by DAHP. This bill also exempts physicians supervising PAs under emergency conditions from the limitation on the number of PAs that may be supervised. This bill was signed by the Governor on September 30 (Chapter 643, Statutes of 1993).

AB 2350 (Escutia), as introduced March 5, would require the California Medical Assistance Commission to consider the extent to which a hospital maximizes the delivery of preventive health care services to pregnant mothers and children by appropriately utilizing primary care physicians, primary care nurse practitioners, and PAs, and the demonstrated willingness of a hospital, or university medical school with which the hospital is affiliated, to actively support the recruitment and training of primary care physicians, primary care nurse practitioners, and PAs at that hospital site. *[A. Health]*

AB 2157 (Polanco). Existing law limits the amounts of the various fees PAEC determines will be paid by a physician who seeks approval to supervise a PA; the existing limit for an application fee for a PA supervisor is $50 and the existing limit for an approval fee is $250 to be charged upon approval of an application to supervise a PA. As introduced March 5, this bill would raise the application fee limit for a PA supervisor to $100, and raise the limit of an approval fee for a PA supervisor to $350. *[A. Health]*

AB 1392 (Speier), as amended July 1, would require PAEC to notify DCA whenever any complaint has gone thirty days without any investigative action, and authorize the DCA Director to review any complaint filed with PAEC. *[S. B&P]*

SB 993 (Kelley), as introduced March 5, would state the intent of the legislature that all legislation becoming effective on or after January 1, 1995, which either provides for the creation of new categories of health professionals who were not required to be licensed on or before January 1, 1994, or revises the scope of practice of an existing category of health professional, be supported by expert data, facts, and studies, including prescribed information, and be presented to all legislative committees of the legislature that hear that legislation prior to its enactment. *[S. B&P]*

AB 1807 (Bronshvag), as amended September 8, would require PAEC licensees to notify PAEC of any change of address within thirty days after such change; authorize PAEC to establish an inactive license category; and make minor clean-up changes to the Physician Assistant Practice Act. *[A. Inactive File]*

RECENT MEETINGS

At its July 23 meeting, PAEC discussed its future in light of the probable July 1, 1994 abolition of MBC's Division of Allied Health Professions, due to a provision in SB 916 (Presley) (*see* LEGISLATION). SB 916 also creates a Committee on Allied Health Professions within MBC, but it has no direct authority over PAEC or any other existing allied health licensing program. The Committee agreed to seek legislation changing its name to the "Physician Assistant Board of California" (PABC), transforming PABC into a board in MBC (instead of a committee of MBC), allowing PABC to assume and perform those duties in the Physician Assistant Practice Act formerly done by DAHP and PAEC (such as adopting regulations), and requiring PABC to "meet and confer" with the new Committee on Allied Health Professions. Subsequent to PAEC's July meeting, some of these changes were amended into DCA's omnibus bill, AB 1807 (Bronshvag) (*see* LEGISLATION); however, the bill encountered opposition at the end of the legislative year and stalled on the Assembly floor. Thus, PAEC, MBC, and DCA must resolve this issue during 1994.

FUTURE MEETINGS

January 21 in San Diego.
April 15 in San Francisco.
July 29 in Los Angeles.
October 7 in Sacramento.

BOARD OF PODIATRIC MEDICINE

Executive Officer:
James Rathlesberger
(916) 263-2647

The Board of Podiatric Medicine (BPM) of the Medical Board of California (MBC) regulates the practice of podiatry in California pursuant to Business and Professions Code section 2460 *et seq.* BPM's regulations appear in Division 13.9, Title 16 of the California Code of Regulations (CCR).

The Board licenses doctors of podiatric medicine (DPMs), administers two licensing examinations per year, approves colleges of podiatric medicine, and enforces professional standards by initiating investigations and disciplining its licentiates, as well as administering its own diversion program for DPMs. The Board consists of four licensed podiatrists and two public members.

MAJOR PROJECTS

BPM to Seek Legislation Requiring Surgical Training in Postgraduate Training Programs. Over the past several years, the Council on Podiatric Medical Education (CPME), the national organization which accredits podiatric medical residencies, has been developing a new "Program Year 1" (PGY-1) category to standardize entry-level postgraduate training programs in podiatric medicine. Since the early 1980s, CPME has accredited three types of podiatric medical residencies: podiatric surgical residencies (PSR) of 12 and 24 months, the rotating podiatric residency (RPR), and the podiatric orthopedic residency (POR). Business and Professions Code section 2484 currently requires podiatric medical graduates to complete one year of "approved postgraduate podiatric surgical training in a general acute care facility," and since 1985 BPM has accepted any of the three types of CPME-accredited residencies as fulfilling this requirement.

However, CPME is in the process of upgrading and replacing the non-surgical RPRs with a new standardized PGY-1 which includes some surgical training. Simultaneously, BPM has been scrutinizing podiatric medical residencies throughout California to ensure that they provide DPMs with sufficient medical training to enable them to perform podiatric medicine, including surgery. *[13:2&3 CRLR 92–93; 13:1 CRLR 55]* BPM notes that residents who have completed non-surgical training programs have a lower rate of success in passing the state's oral clinical licensing exam, and that there is a lack of unanimity that non-surgical programs meet the law's requirements.

Consistent with these findings and CPME's efforts, BPM plans to sponsor legislation in 1994 which would amend Business and Professions Code sections 2475.2, 2475.3, and 2484 to state that, effective January 1, 1996, BPM will ap-

prove only those entry-level podiatric medical residencies which include surgical training. Specifically, section 2484 would be amended to require, as a condition of licensure, completion of one year of "approved graduate podiatric medical and surgical training based in a general acute care hospital." BPM stresses that this legislative change does not require completion of a PSR, but simply an entry-level program which incudes surgery. BPM also hopes this proposal will prompt the University of California to create podiatric medical residencies or permit DPM graduates to participate in surgery rotations in UC-affiliated teaching hospitals.

Rulemaking Update. On August 23, the Office of Administrative Law approved BPM's amendments to sections 1399.669 and 1399.670, Title 16 of the CCR. Among other things, these regulatory changes require that a minimum of twelve of the fifty hours of continuing education currently required for each two-year license renewal for DPMs be in subjects related to the lower extremity muscular skeletal system. *[13:2&3 CRLR 93]*

Examination Statistics. In August, BPM published a tally of its licensure examination statistics for exams administered between November 1984 and May 1993. Of a total of 848 exams administered, 695 examinees (82%) passed. The statistics for the exam, which is administered in May and November of each year, showed a slightly higher pass rate for exams given in May (84%) than in November (76%).

LEGISLATION

SB 916 (Presley), as amended September 8, is a wide-ranging bill affecting BPM and the Medical Board of California (MBC) which—among other things—abolishes MBC's Division of Allied Health Professions, under whose jurisdiction BPM currently functions. (*See* agency report on MBC for a complete description of SB 916.) This bill was signed by the Governor on October 11 (Chapter 1267, Statutes of 1993).

AB 919 (Speier), as amended September 3, provides that, effective January 1, 1995, it is a misdemeanor for podiatrists and other health care professionals to refer persons for certain diagnostic tests and ancillary services, if the professional has a financial interest with the person or in the entity that receives the referral. The bill also prohibits podiatrists from entering into certain arrangements or schemes, such as cross-referral arrangements. This bill was signed by the Governor on October 11 (Chapter 1237, Statutes of 1993).

AB 297 (Snyder). Existing law permits a podiatrist to perform surgical treatment of the ankle and tendons at the level of the ankle only in a licensed general acute care hospital, as defined. As amended June 17, this bill additionally permits a podiatrist to perform this surgical treatment in (1) a licensed surgical clinic if the podiatrist has surgical privileges, including the privilege to perform surgery on the ankle, in a licensed general acute care hospital and meets all the protocols of the clinic, (2) an ambulatory surgical center that is certified to participate in the federal Medicare program if the podiatrist has surgical privileges, including the privilege to perform surgery on the ankle, in a licensed general acute care hospital and meets all the protocols of the center, and (3) a freestanding physical plant housing outpatient services, as defined. This bill was signed by the Governor on July 26 (Chapter 202, Statutes of 1993).

AB 2316 (V. Brown), as amended September 2, would have required, with certain exceptions, any podiatrist who provides primary care to a patient and sells, closes, or transfers his/her practice to notify each patient, with certain exceptions, in writing, of the sale, closure, or transfer, and of the intended disposition of the patient's medical records, at least thirty days prior to the intended sale, closure, or transfer of his/her practice, and to advise each patient that they have thirty days to direct that their records be transferred or sent only to the licensee of their choice without any cost to the patient to transfer or direct these records to another licensee. This bill was vetoed by the Governor on October 11.

AB 635 (Cortese). The Knox-Keene Health Care Service Plan Act of 1974 prohibits health care service plans that offer podiatry services as a specific podiatric plan benefit from refusing to give reasonable consideration to affiliation with podiatrists for the provision of podiatry services solely on the basis that they are podiatrists. As introduced February 22, this bill would instead prohibit a plan that offers podiatry services within the benefits of a plan that relate to foot care from refusing to give reasonable consideration to affiliation with podiatrists for the provision of podiatry services solely on the basis that they are podiatrists. The bill would also require a plan to consider, as prescribed, a request for affiliation by a podiatrist in relation to services offered by the plan. *[A. Health]*

AB 720 (Horcher), as introduced February 22, would prohibit any person other than a licensed physician, podiatrist, or dentist from applying laser radiation, as defined, to any person for therapeutic purposes, and would provide that any person who violates this provision is guilty of a misdemeanor. *[A. Health]*

AB 1807 (Bronshvag), as amended September 8, would revise the terms that may be used by DPMs for fictitious name permits, and reduce the amount of time within which a DPM may renew his/her expired license from five to three years. *[A. Inactive File]*

AB 2214 (Lee), as introduced March 5, would require any podiatrist who sells, closes, or transfers his/her practice to notify each patient in writing of the sale, closure, or transfer, and require that each patient be given an opportunity to determine where his/her records shall be directed before the licensee transfers or otherwise disposes of those records. *[A. Health]*

LITIGATION

In ***Neal Allen Marek, et al. v. Board of Podiatric Examiners***, 16 Cal. App. 4th 1089 (June 24, 1993), the Second District Court of Appeal interpreted Business and Professions Code section 2305 and determined that BPM may lawfully discipline a licensee based solely upon the fact that another state has disciplined that licensee, even where the other state's disciplinary action is stipulated to by the licensee.

In 1985, petitioners Neal Allen Marek and Robert G. Basinger, who were licensed to practice podiatric medicine in Nevada and California, were accused by the Nevada State Board of Podiatry of unprofessional conduct and numerous other violations. Both petitioners entered into a consent decree with Nevada whereby their licenses were put on probation for three years subject to numerous terms and conditions; under the terms of the consent decree, petitioners admitted to no wrongdoing. Shortly thereafter, both petitioners moved to California and began to practice podiatric medicine.

In 1986, BPM filed accusations against both petitioners, alleging violations of Business and Professions Code section 2305, which provides that "[t]he revocation, suspension, or other discipline by another state of a license or certificate to practice medicine issued by the state...to a licensee under this chapter shall constitute grounds for disciplinary action for unprofessional conduct against such licensee in this state." In May 1991, an administrative law judge (ALJ) proposed a decision dismissing both accusations, on grounds that a substantial amount of time had elapsed since the events leading to the Nevada discipline, "the absence of a factual predicate for the Nevada discipline," and petitioners' competent and successful practice in California in the interim. BPM

nonadopted the ALJ's proposed decision and revoked the licenses of both petitioners, but stayed the revocations and put both petitioners on probation for three years subject to numerous terms and conditions. In November 1991, petitioners obtained a writ of mandate from superior court ordering BPM to vacate the disciplinary actions; "the superior court found that since there was no evidence in the consent decree supporting the underlying disciplinary action taken by the Nevada Board, the California Board had no grounds or factual basis to support its order, which thus violated due process." BPM appealed.

On June 24, a unanimous panel of the Second District Court of Appeal reversed the superior court's decision and reinstated BPM's disciplinary order. The appellate court interpreted section 2305 for the first time, and stated that it "applies by its terms to any discipline imposed by another state of a license or certificate to practice medicine issued by that state and thus includes, as here, acquiescence by signing a consent decree to disciplinary action without any admission of the charges brought by the foreign jurisdiction. The focus of section 2305 is the mere fact that a measure of discipline was imposed on the licensee and not how it was imposed by the foreign jurisdiction."

The court cited several policy concerns which support its interpretation of the section. First, the court found that permitting an inquiry into the underlying conduct which led to the consent decree would unduly burden California by requiring it to investigate misconduct in another state and bring witnesses and evidence to California for presentation at an evidentiary hearing. More significantly, "limiting the application of section 2305 to situations where the licensees admit culpability or where misconduct is proven in the foreign jurisdiction would make California a safe haven for medical practitioners who, in the face of charges of unprofessional conduct, enter into consent decrees in other jurisdictions without making any admissions, leave that other jurisdiction, establish medical practices in California and thus avoid review of their medical practices by any licensing agency. Such a result would be contrary to the interests of the state of California in ensuring the professional conduct of its medical licensees."

The California Supreme Court declined to review this decision on September 16.

RECENT MEETINGS

BPM has not met since April 30. *[13:2&3 CRLR 92–94]*

At its November 5 meeting, BPM is expected to discuss its future in light of the July 1, 1994 abolition of MBC's Division of Allied Health Professions, due to a provision in SB 916 (Presley) (*see* LEGISLATION). Although the bill eliminates DAHP, it does not address whether BPM and other allied health licensing programs will remain under the jurisdiction of MBC or become independent agencies within the Department of Consumer Affairs (DCA). BPM has consistently expressed its desire to either secure adequate representation for podiatrists on MBC or to become an independent agency within DCA *[13:2&3 CRLR 92; 13:1 CRLR 54–55]*, and thus is expected to sponsor legislation in 1994 to that effect.

FUTURE MEETINGS

January 24 in Sacramento.
May 6 in San Francisco.

BOARD OF PSYCHOLOGY

Executive Officer:
Thomas O'Connor
(916) 263-2699

The Board of Psychology (BOP) (formerly the "Psychology Examining Committee") is the state regulatory agency for psychologists under Business and Professions Code section 2900 *et seq*. Under the general oversight of the Medical Board's Division of Allied Health Professions, BOP sets standards for education and experience required for licensing, administers licensing examinations, issues licenses, promulgates rules of professional conduct, regulates the use of psychological assistants, investigates consumer complaints, and takes disciplinary action against licensees by suspension or revocation. BOP's regulations are located in Division 13.1, Title 16 of the California Code of Regulations (CCR).

BOP is composed of eight members—five psychologists and three public members. Each member of the Board is appointed for a term of four years, and no member may serve for more than two consecutive terms. Currently, Louis Jenkins, Judith Fabian, Linda Hee, Frank Powell, and Bruce Ebert are BOP's psychologist members, and Philip Schlessinger and Linda Lucks are its public members. One BOP public member position is vacant.

MAJOR PROJECTS

Continuing Education Regulations. On September 24, BOP published notice of its intent to adopt new Article 10 (commencing with section 1397.60), Division 13.1, Title 16 of the CCR, which implements SB 774 (Boatwright) (Chapter 260, Statutes of 1992). SB 774 added section 2915 to the Business and Professions Code, which requires psychologists, effective January 1, 1996, to satisfy continuing education (CE) requirements prior to license renewal. *[12:4 CRLR 109]*

Among other things, new Article 10 requires each licensed psychologist to submit with his/her application for license renewal proof satisfactory to the Board that he/she has completed the required CE hours, which may be satisfied by lectures, conferences, seminars, and workshops; correspondence courses, independent study, and home study programs are not acceptable for CE credit. If requested by the Board, licensees must verify completion of CE courses by producing verification of attendance certificates; a false or material misrepresentation by a licensee on a CE verification form is grounds for disciplinary action.

Article 10 also sets forth grounds for exemption from the CE requirement; provides that the California Psychological Association is approved as a CE accreditation agency; and sets forth criteria for BOP approval as a CE accreditation agency and as a CE provider. At this writing, BOP is expected to hold a public hearing on these regulatory proposals at its November 13 meeting.

Update on Other BOP Rulemaking. The following is a status update on other BOP rulemaking proceedings described in detail in recent issues of the *Reporter*:

• On June 14, the Office of Administrative Law (OAL) approved BOP's amendments to regulatory sections 1380.4 (delegation of enforcement authority to Executive Officer, Board Chair, and then Board Vice-Chair), 1388 (delete a reference to the Examination for Professional Practice in Psychology), 1392 (increase psychologists' biennial renewal fee to $400), and 1392 (increase written exam fee to $273 and set oral exam fee at $78). *[13:2&3 CRLR 94]*

• On August 18, OAL approved BOP's adoption of new section 1387.3 and amendments to sections 1386(c) and 1387, which flesh out the Board's supervised professional experience requirement in Business and Professions Code section 2914. *[13:2&3 CRLR 94–95; 12:4 CRLR 107–08]*

LEGISLATION

SB 916 (Presley), as amended September 8, is a wide-ranging bill affecting the Medical Board of California (MBC) which—among other things—abolishes the Board's Division of Allied Health Pro-

fessions (DAHP), under whose jurisdiction BOP currently functions. (*See* agency report on MBC for a complete description of SB 916.) This bill was signed by the Governor on October 11 (Chapter 1267, Statutes of 1993).

AB 179 (Snyder). Existing law provides that it is unlawful for any person licensed by BOP to charge, bill, or otherwise solicit payment from any patient, client, or customer, for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, unless the patient, client, or customer is apprised at the first, or any subsequent, solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. As amended June 18, this bill deletes the requirement that the patient, client, or customer be apprised for any subsequent solicitation for payment of the name, address, and charges. The bill prohibits this provision from applying to a clinical laboratory of a health facility, as defined, or a health facility when billing for a clinical laboratory of the facility, or to any person licensed for one of those practices, if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges. This bill was signed by the Governor on August 25 (Chapter 304, Statutes of 1993).

AB 700 (Bowen). The Psychology Licensing Law authorizes a committee of BOP to issue fictitious name permits and authorizes psychologists to practice under a fictitious or false name if the psychologist has a current fictitious name permit issued by the committee. Existing law also requires a person, including a psychologist, to file a fictitious business name statement with the county clerk. As amended July 16, this bill would have delegated that authority to the Board rather than the committee, deleted the authority of the Board to issue fictitious name permits to professional psychological corporations, imposed other restrictions on issuing the permits, and authorized the Board to charge a fee for a fictitious name permit. This bill was vetoed by the Governor on October 10.

SB 743 (Boatwright). Existing law provides that any act of sexual abuse, misconduct, or relations with a patient, client, or customer that is substantially related to the qualifications, functions, or duties of the occupation for which a license is issued constitutes unprofessional conduct and grounds for disciplinary action for certain healing arts practitioners and social workers. As amended August 30, this bill deletes the condition that the act be substantially related to the qualifications, functions, or duties of the occupation for which a license was issued.

Existing law provides that a psychotherapist who engages in sexual contact, as defined, with a patient or client, or with certain former patients or clients, is guilty of sexual exploitation, with certain exceptions. This bill also applies that provision to a physician. The bill specifies that each act of sexual contact is a separate violation of the provision and changes the definition of "sexual contact." This bill was signed by the Governor on October 10 (Chapter 1072, Statutes of 1993).

AB 890 (B. Friedman), as amended September 1, requires applicants for licensure to demonstrate that they have completed coursework in spousal or partner abuse assessment, detection, and intervention. This bill also permits courses in spousal or partner abuse assessment, detection, and intervention to satisfy a portion of BOP's continuing education requirements. This bill was signed by the Governor on October 11 (Chapter 1234, Statutes of 1993).

AB 1807 (Bronshvag). Existing law provides for the administration of the Psychology Licensing Law by BOP and DAHP; as amended September 8, this bill would repeal DAHP's authority to administer the law effective July 1, 1994. This bill would also revise requirements regarding publication of notices of the regular meetings of BOP, and authorize BOP to reduce any of prescribed fees relating to licensing of psychologists as it deems administratively appropriate.

Existing law authorizes BOP to order the denial of an application for licensure, issue a license with terms and conditions, or order the suspension or revocation of a license for certain causes. This bill would revise these provisions and eliminate the use of a fictitious, false, or assumed name by a licensee, alone or in conjunction with a group or partnership, as described, from those causes.

This bill would also authorize BOP to issue a citation if, upon investigation, the Board has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services without being properly licensed, and to require the violator to cease the unlawful advertising. This bill would also reduce the time within which a psychologist may renew his/her expired license from five to three years, and would require that BOP maintain complaints or reports as long as it deems necessary. *[A. Inactive File]*

AB 705 (Alpert). The Lanterman-Petris-Short Act authorizes a person involuntarily detained in a mental health facility to be released if the psychiatrist directly responsible for that person's treatment, or a reviewing psychiatrist, believes that the person no longer requires evaluation or treatment, or is not a danger to others or to himself/herself, subject to certain conditions. The Act also exempts the psychiatrist, among others, from civil and criminal liability for any actions of a person so released. As introduced February 23, this bill would also authorize the release of a person involuntarily detained if the psychologist directly responsible for that person's treatment, or a reviewing psychologist, believes that the person no longer requires evaluation or treatment, or is not a danger to others or to himself/herself, and would exempt the psychologist from civil and criminal liability for that person's actions. *[A. Health]*

AB 757 (Polanco), as amended July 16, is no longer relevant to BOP.

LITIGATION

In ***Sehlmeyer v. Department of General Services (Stempf and Board of Psychology, Real Parties in Interest)***, 17 Cal. App. 4th (Aug. 9, 1993) (certified for partial publication), the Second District Court of Appeal identified a hole in the law governing the production of records pursuant to a subpoena duces tecum in administrative disciplinary proceedings, and urged the legislature to "act expeditiously to address the problem."

Ellen Sehlmeyer filed a complaint with the Board of Psychology about Craig Stempf, a licensed clinical psychologist. The Board initiated a disciplinary action against Stempf, and a hearing was set before an Office of Administrative Hearings (OAH) administrative law judge. Prior to the hearing, Stempf served 17 subpoenas duces tecum on Sehlmeyer's past and present physicians, psychotherapists, and attorneys. Stempf served copies of the subpoena on the Board and gave one to the ALJ at a prehearing conference, but gave no notice of any kind to Sehlmeyer. When Sehlmeyer discovered the disclosure, she filed a petition for writ of mandate to compel OAH (which is within the Department of General Services) to quash the subpoenas and return the documents. The trial court granted the petition, finding that service of the subpoenas without prior notice to Sehlmeyer violated her right of privacy, and ordered Stempf to pay Sehlmeyer's attorneys' fees of over $70,000. Stempf appealed.

On appeal, the Second District reviewed the law as it applies to document production in civil litigation, Code of Civil Procedure section 1985 *et seq.*, and noted that section 1985.3 conditions the

issuance of a subpoena duces tecum requesting specified personal records upon timely notice to the consumer whose records are sought. The Administrative Procedure Act, Government Code section 11500 *et seq.*, which governs administrative disciplinary proceedings, largely replicates the Code of Civil Procedure with respect to the issuance of subpoenas duces tecum, but omits to include a counterpart to section 1985.3. Thus, Stempf argued that he had no legal obligation to notify Sehlmeyer of his requests for her personal records.

The Second District then reviewed *Valley Bank of Nevada v. Superior Court*, 15 Cal. 3d 652 (1975), caselaw regarding the compelled production of personal records in civil litigation prior to the legislature's enactment of section 1985.3, and held that "there...exists a [state] constitutional and common law right to privacy which resolves the underlying issues against Stempf." Even assuming that Sehlmeyer's personal records were somehow relevant to the Board of Psychology's disciplinary action against Stempf's license, and noting that the records at issue here are arguably privileged documents (under the attorney-client, physician-patient, and psychotherapy-patient privileges), the court applied the "careful balancing" test set forth in the *Valley Bank* case and held that "the Legislature's failure to incorporate the notice provisions of Code of Civil Procedure section 1985.3 into Government Code section 11510 could not and does not diminish rights created by the California Constitution and that here, as in *Valley Bank*, overriding constitutional considerations compel recognition of some form of protection for information which is indisputably confidential." The Second District also upheld the trial court's attorneys' fees award on grounds Stempf failed to properly challenge it below, such that he was precluded from raising the issue for the first time on appeal.

RECENT MEETINGS

At BOP's August 28 meeting, Enforcement Coordinator Suzanne Taylor announced the Board's final 1992–93 enforcement statistics. The Board received 621 complaints, opened 198 formal investigations, sent 72 cases to the Attorney General's Office for the filing of accusations, filed 48 accusations, revoked 14 licenses, accepted voluntary surrender of five licenses, disciplined an additional 11 licenses, and obtained five interim suspension orders. Seventeen of the Board's disciplinary decisions pertained to sexual misconduct by licensees.

FUTURE MEETINGS

To be announced.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY EXAMINING COMMITTEE

Executive Officer: Carol Richards (916) 263-2666

The Speech-Language Pathology and Audiology Examining Committee (SPAEC) consists of nine members: three speech-language pathologists, three audiologists and three public members (one of whom is a physician). SPAEC functions under the jurisdiction and supervision of the Medical Board's Division of Allied Health Professions (DAHP).

The Committee administers examinations to and licenses speech-language pathologists and audiologists. It also registers speech-language pathology and audiology aides. SPAEC hears all matters assigned to it by the Division, including but not limited to any contested case or any petition for reinstatement, restoration, or modification of probation. Decisions of the Committee are forwarded to DAHP for final adoption.

SPAEC is authorized by the Speech-Language Pathologists and Audiologists Licensure Act, Business and Professions Code section 2530 *et seq.*; its regulations are contained in Division 13.4, Title 16 of the California Code of Regulations (CCR).

Assembly Speaker Willie Brown recently appointed Louise Gilbert as the Committee's newest public member. At this writing, SPAEC has three remaining vacancies (two audiologist positions and one public member position), all of which must be appointed by Governor Wilson.

MAJOR PROJECTS

SPAEC Rulemaking. At its June 25 meeting, SPAEC held a public hearing on three proposed changes to its regulations in Division 13.4, Title 16 of the CCR. *[13:2&3 CRLR 96–97]*

First, the Committee considered a proposed amendment to section 1399.161(b), which would specify that a maximum of 5% per week of hearing screening services provided by a speech-language pathologist licensure candidate completing his/her required professional experience (RPE) shall be creditable toward the experience requirement. SPAEC received no written or oral comments on this proposal, and adopted it.

Next, SPAEC considered a proposed amendment to section 1399.163(e), which would require RPE supervisors to conduct monthly evaluations of RPE applicants and retain written documentation of the evaluations signed by the supervisor and the licensure candidate. In response to a comment, the Committee clarified that it does not intend to adopt evaluation forms for this purpose; supervisors may choose their own format so long as documentation is provided. Following brief discussion, SPAEC adopted this proposal as well.

Finally, SPAEC reviewed the proposed repeal of subsection 1399.180(c), which currently classifies as unprofessional conduct "[d]iagnosing or treating individuals for speech-language or hearing disorders by mail or telephone unless the individual has been previously examined by the licensee and the diagnosis or treatment is related to such examination." A member of the audience, audiologist Ken Wolf, expressed concern that the repeal of this provision might encourage the unlicensed practice of audiology, citing several examples of situations he considers to be unlicensed practice. Department of Consumer Affairs (DCA) legal counsel Greg Gorges disagreed that any of the examples cited by Wolf constitute unlicensed practice, and the Committee voted to repeal section 1399.180(c). However, SPAEC also decided to address the issues raised by Wolf by developing language for a new subsection 1399.180(c), which will be noticed at a future date.

At this writing, the rulemaking record on these proposed changes awaits approval by the DCA Director and the Office of Administrative Law (OAL).

SPAEC Approves Modifications to Exam Waiver Criteria Regulation. Also on June 25, SPAEC reviewed some "minor technical changes" suggested by DCA to amendments to section 1399.159(b) which the Committee adopted in March. Amended section 1399.159(b) defines the criteria which will be applied by SPAEC in deciding whether to grant a request for an exam waiver under Business and Professions Code section 2532.2(e). *[13:2&3 CRLR 96; 13:1 CRLR 57; 12:4 CRLR 109–10]* While most of the changes were minor and tend to clarify the rule, DCA also recommended a change which appears to defeat the purpose of the Center for Public Interest Law (CPIL) in suggesting the rule. CPIL sought codification of a standard set of criteria which would be applied even-handedly to all applicants for an exam waiver and, if satisfied, would predictably result in an exam waiver. The version of section 1399.159(b) adopted by SPAEC in March satisfied that intent by providing that exam waiver applicants who meet the criteria *shall* be deemed to have satisfied the examination requirement. However, DCA changed the language to read that an applicant who satisfies the criteria *may* be

deemed to have satisfied the examination requirement, appearing to open the door for the same kind of inconsistent decision-making on exam waivers which led CPIL to petition SPAEC to adopt the criteria. SPAEC adopted DCA's suggestions and has submitted the rulemaking record on the proposed change to OAL for review, where it is pending at this writing.

Ad Hoc Committee to Investigate Invasive Procedures. After a lengthy discussion at its June 25 meeting, the Committee agreed to form a six-member Ad Hoc Committee to investigate invasive procedures not presently covered by statutes setting forth the scope of practice of either speech-language pathologists or audiologists. These procedures include endoscopy, both nasal and oral, for speech-language pathologists, and cerumen management for audiologists. SPAEC members Gail Hubbard, Dr. David Alessi, and Jacqueline Graham will serve on the Ad Hoc Committee, and the other three members will be recruited from outside SPAEC. The Ad Hoc Committee will gather information and report back to SPAEC at a future meeting.

LEGISLATION

SB 916 (Presley), as amended September 8, is a wide-ranging bill affecting the Medical Board of California (MBC) which—among other things—abolishes the Board's Division of Allied Health Professions, under whose jurisdiction SPAEC currently functions. (*See* RECENT MEETINGS; *see also* agency report on MBC for a complete description of SB 916.) This bill was signed by the Governor on October 11 (Chapter 1267, Statutes of 1993).

SB 842 (Presley), as amended July 14, permits SPAEC to issue interim orders of suspension and other license restrictions, as specified, against its licensees. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

AB 1807 (Bronshvag), as amended September 8, would require SPAEC licensees to notify the Committee of any change of address within thirty days and authorize SPAEC to establish by regulation a system for an inactive category of licensure. *[A. Inactive File]*

SB 595 (Rogers). Existing law permits physicians and audiologists to certify that a person is deaf or hearing impaired for purposes of receiving specialized or supplemental telephone equipment from telephone corporations regulated by the Public Utilities Commission. As amended April 19, this bill would permit such certification to be made by a hearing aid dispenser if a physician has evaluated the hearing of the applicant. *[S. E&PU]*

AB 1392 (Speier), as amended July 1, would require SPAEC to notify DCA whenever any complaint has gone thirty days without any investigative action, and would require the DCA Director to determine when a backlog of complaints justifies the use of DCA staff to assist in complaint investigation. *[S. B&P]*

SB 993 (Kelley), as introduced March 5, would state the intent of the legislature that all legislation becoming effective on or after January 1, 1995, which either provides for the creation of new categories of health professionals who were not required to be licensed on or before January 1, 1994, or revises the scope of practice of an existing category of health professional, be supported by expert data, facts, and studies, including prescribed information, and be presented to all legislative committees hearing the legislation prior to its enactment. *[S. B&P]*

RECENT MEETINGS

At its June 25 meeting, SPAEC discussed its future in light of the probable July 1, 1994 abolition of MBC's Division of Allied Health Professions, due to a provision in SB 916 (Presley) (*see* LEGISLATION). DCA legal counsel Greg Gorges stated that the Committee has two options: remain under the jurisdiction of the Medical Board or become an independent board within DCA. If SPAEC chooses the latter option, it would need to secure DCA's assistance in sponsoring legislation removing it from the Medical Board and changing its name to "Board" rather than "Committee." SPAEC could continue to contract with MBC's enforcement program for the intake and investigation of its discipline cases, if it so desires. Following discussion, the Committee voted to begin the process of becoming an independent board within DCA. Subsequent to SPAEC's June 25 meeting, DCA amended its omnibus bill, AB 1807 (Bronshvag), to include language removing SPAEC and several other allied health licensing programs from DAHP and MBC; however, that language encountered opposition at the end of the legislative year and the bill stalled on the Assembly floor. Thus, SPAEC and DCA must resolve this issue during 1994.

Also on June 25, the Committee discussed whether a general law corporation may directly employ a speech-language pathologist to perform therapy services, or whether such therapy services must only be performed through a licensed speech-language pathology professional corporation. Greg Gorges opined that the relevant statutes are unclear, and do not expressly prohibit a general law corporation from employing a speech-language pathologist. Following discussion, SPAEC adopted the position that the laws are not clear enough to enable it to prohibit such direct employment of licensees by general law corporations; however, the Committee expressed concerns about the potential for fraud and abuse with the private hiring of licensees and warned that each licensee so hired is required to comply with all laws and regulations.

Also in June, Executive Officer Carol Richards suggested that SPAEC adopt a rule requiring licensees to include their license number in advertising and on reports. The Committee agreed to review a draft of such a rule at its next meeting.

FUTURE MEETINGS

January 7 in San Diego.
April 22 in Sacramento or Monterey.
July 22 in Irvine.
October 28 in San Francisco.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Interim Executive Officer: Pamela Ramsey
(916) 263-2685

Pursuant to Business and Professions Code section 3901 *et seq.*, the Board of Examiners of Nursing Home Administrators (BENHA) develops, imposes, and enforces standards for individuals desiring to receive and maintain a license as a nursing home administrator (NHA). The Board may revoke or suspend a license after an administrative hearing on findings of gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying for a license, treating any mental or physical condition without a license, or violation of any rules adopted by the Board. BENHA's regulations are codified in Division 31, Title 16 of the California Code of Regulations (CCR). Board committees include the Administrative, Disciplinary, and Education, Training and Examination Committees.

The Board consists of nine members. Four of the Board members must be actively engaged in the administration of nursing homes at the time of their appointment. Of these, two licensee members must be from proprietary nursing homes; two others must come from nonprofit, charitable nursing homes. Five Board members must represent the general public. One of the five public members is required to be actively engaged in the practice of medicine; a second public